

DISTRICT
IN THE UNITED STATES ~~BANKRUPTCY~~ COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

TONY D. BROWN and
DONNA R. BROWN

Debtors.

FRED W. WOODSON, TRUSTEE
Movant,

vs.

TONY D. BROWN and
DONNA R. BROWN,

Respondents.

Case No. 89-01522-W
Chapter 7

Appeal No. 89 C-882-C

ORDER GRANTING DISMISSAL WITH PREJUDICE

Upon stipulation of the parties and for good cause shown,
Appellants' cause of action is hereby dismissed with prejudice to
the refiling of such actions.

IT IS SO ORDERED this 31st day of January, 1990.

[Signed] H. Dale Cook

JUDGE OF THE DISTRICT COURT

FILED

JAN 31 1990

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

REGINALD BROWN, a Minor by and
through his Next Friend and
Natural Mother, ANNIE LEE RUSHING,

Plaintiff,

vs.

No. 89-C-294-C

THE MAY DEPARTMENT STORES CO.,
(Trade Name: FOLEY'S DEPARTMENT
STORE),

Defendant.

JOURNAL ENTRY OF JUDGMENT

NOW on this 29th day of January, 1990, this matter comes on for hearing before the undersigned judge. The plaintiff is present and represented by his attorney, O. B. Graham, and the defendant is present and represented by its attorney, Harold C. Zuckerman. Being duly advised in the premises, the Court hereby finds as follows:

1. That the plaintiff is entitled to judgment in the amount of \$1,500.

2. That the following costs are to be deducted from the judgment amount of \$1,500:

- a. \$300 - medical expenses, Dr. Gary R. Davis;
- b. \$69 - court costs; and
- c. \$124.60 - deposition costs

3. That the plaintiff's attorney, O.B. Graham, is entitled to an attorney's fee in the amount of \$506.40 and said amount is to be deducted from the above \$1,500.

4. That the plaintiff, Reginald Brown, a Minor by and through his Next Friend and Natural Mother, Annie Lee Rushing, shall receive \$500, which is the amount remaining from the \$1,500 judgment after expenses and attorney fees have been deducted.

5. That pursuant to OKLA.STAT. tit. 12 §83, none of the above judgment is required to be deposited in a banking or savings and loan institution approved by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff be granted judgment in the amount of \$1,500 and that the expenses as set forth above shall be deducted from the amount of said judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's attorney is awarded an attorney's fee of \$506.40, also to be deducted from the \$1,500 judgment amount, and that after said deduction of attorney's fees and costs, the plaintiff, Reginald Brown, a Minor by and through his Next Friend and Natural Mother, Annie Lee Rushing, is entitled to the remaining \$500.

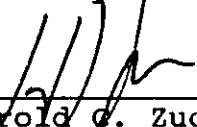
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to OKLA.STAT. tit. 12 §83 no money is required to be deposited in any banking or savings and loan institutions.



UNITED STATES MAGISTRATE

APPROVED AS TO FORM AND CONTENT:


O. B. Graham
Attorney for Plaintiff


Harold G. Zuckerman
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 30 1990

JON ENGLES TRUCKING, INC.,
an Oklahoma Corporation,

Plaintiff,

vs.

SUNBELT EXPRESS, INC.,
a Texas corporation, TRUCK
INSURANCE EXCHANGE and
GILBERT SILVA,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-403-E

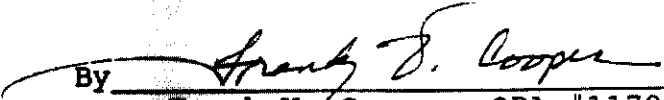
**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE**

COMES NOW Plaintiff, Jon Engles Trucking, Inc., Defendant, Truck Insurance Exchange, and Defendant, Sunbelt Express, Inc., by and through their undersigned counsel of record and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure stipulate to a dismissal without prejudice of the above claimed action against Truck Insurance Exchange only. Each party shall bear their own costs and attorneys fees.

Respectfully submitted,

MOYERS, MARTIN, SANTEE, IMEL & TETRICK

By


Frank V. Cooper, OBA #11795
320 South Boston #920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF
JON ENGLES TRUCKING, INC.

WILBURN, MASTERSON & SMILING

By David K. Robertson
David K. Robertson
2526-A East 71st Street
Tulsa, Oklahoma 74136-5548
(918) 494-0414

ATTORNEYS FOR DEFENDANT
TRUCK INSURANCE EXCHANGE

FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS

By John Woodard
John Woodard
525 South Main, Suite 1400
Tulsa, Oklahoma 74103-4409
(918) 583-7129

ATTORNEYS FOR DEFENDANT
SUNBELT EXPRESS, INC.

1-29-90
fvc/dl
5.0/engles.stipulation

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 30 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BILLY FRANKLIN WILLIAMS,

Plaintiff,

vs.

EAGLE-PICHER INDUSTRIES, INC.,
and OWENS-CORNING FIBERGLAS
CORPORATION,

Defendants.

No. 88-C-716-B

J U D G M E N T

In accordance with the verdict of the jury, rendered on January 29, 1990, Judgment is hereby entered in favor of Plaintiff, Billy Franklin Williams, and against the Defendants, Eagle-Picher Industries, Inc. and Owens-Corning Fiberglas Corporation, in the amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00), less Twenty-Six Thousand Six Hundred Twenty One and No/100 Dollars (\$26,621.00), for a total judgment of One Million One Hundred Seventy Three Thousand Three Hundred Seventy Nine and NO/100 Dollars (\$1,173,379.00), plus pre-judgment interest at the rate of 12.35% per annum (12 O.S. §727) from the date of July 28, 1988 to the date of Judgment, and post-judgment interest at the rate of 7.74% per annum (28 U.S.C. §1961) from the date of judgment on the total of said principal sum and pre-judgment interest, and his costs of the action if timely applied for under the Local Rules.

DATED this 30th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 30 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

SUTHERLAND LUMBER COMPANY, L.P.,)
a limited partnership,)

Plaintiff,)

vs.)

No. 89-C-932-C

SIMMONS INDUSTRIES, INC.,)
a corporation; MERLE LARSON)
and DELORES A. LARSON,)
individuals; and SIMMONS)
POULTRY FARMS, INC.,)
a corporation,)

Defendants.)

ORDER

On December 20, 1989, this matter came on for hearing on plaintiffs' application for a temporary restraining order. Since an evidentiary hearing was held in which all parties participated, the Court may treat the application as a motion for a preliminary injunction, subject to those standards that must be met for issuance of a preliminary injunction. TLX Acquisition Corp. v. Telex Corp., 679 F.Supp. 1022, 1028 (W.D.Okla. 1987). Moreover, plaintiff has subsequently filed a second amended complaint which includes an allegation of jurisdictional amount, an issue noted by the Court during the hearing. Defendants have not disputed the propriety of jurisdiction. The Court, having reviewed the record, now issues its Order.

The following standard applies:

A preliminary injunction is an extraordinary remedy, the exception rather than the rule. Because it constitutes drastic relief to be provided with caution, a preliminary injunction should be granted only in cases where the necessity for it is clearly established. In this circuit, a party seeking a preliminary injunction must satisfy four prerequisites:

"(1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest."

When the movant has established that he will suffer irreparable injury and that the balance of hardships tips decidedly in his favor, however, he may satisfy the probability-of-success factor by raising "questions going to the merits so serious, substantial, difficult and doubtful as to make them a fair ground for litigation and thus for more deliberate inquiry."

Potawatomi Indian Tribe v. Enterprise Mgt. Consul., 883 F.2d 886, 888-89 (10th Cir. 1989) (citations omitted).

Plaintiff alleges that it owns 700 acres of real property in Delaware County, Oklahoma, where it maintains a corporate training and recreational center for its employees. Further, that defendant Simmons Industries has acquired 40 acres of real property immediately contiguous to plaintiff's property. That defendant Simmons Industries intends to erect and operate ten commercial chicken houses on defendant's property, each to contain 20,000 - 22,000 chickens.

Plaintiff asserts that the commercial chicken operation will constitute a nuisance to plaintiff and other surrounding property owners, because of odors, noise, pests, sanitary hazards, etc. Also, it will require the consumption of considerable quantities of groundwater, thus damaging wells and ponds.

Plaintiff asks that defendants be enjoined from constructing and operating chicken houses on said property.

First, the Court must take note of the fact that defendant Merle Larson filed an application for a groundwater permit with the Oklahoma Water Resources Board. A hearing was held before that body on November 29, 1989, and the Board issued its Findings of Fact, Conclusions of Law and Board Order on January 9, 1990. The Board granted the permit. In so doing, the Board adjudicated various issues as to waste and depletion of groundwater, pursuant to its jurisdiction under 82 O.S. §§1020.1 et seq. Specifically, the Board found that waste of groundwater by depletion will not occur (Finding of Fact 6A), and that waste of groundwater by pollution will not occur (Finding of Fact 7A). The Board rejected complainants' argument that the applicant should be required to conduct a study showing that depletion of the groundwater basin will not occur. This ruling was based upon a finding of inconclusive evidence as to adverse impact. (Finding of Fact 6B). The Board also concluded that concerns about airborne contamination, flies and odors were outside the scope of a groundwater application proceeding. (Conclusion of Law 8).

Defendants argue that this Court should abstain from considering issues ruled upon by the Board under Burford v. Sun Oil Co., 319 U.S. 315 (1943). Burford was a diversity case to enjoin the enforcement of a state administrative order regarding the drilling of oil wells. The Supreme Court held that abstention was proper because the state had established its own elaborate review system to deal with the complexities of oil field regulation, and

review of claims arising under this system by lower federal courts would have an impermissibly disruptive effect on state policy for management of oil fields.' In Robert-Gay Energy v. State Corp. Commission, 753 F.2d 857 (10th Cir. 1985), plaintiffs filed in district court a complaint and an application for a temporary restraining order and preliminary injunction which necessarily challenged an order of the Kansas Corporation Commission which denied permission to drill an oil well near the boundary line of real property. The district court dismissed the complaint based upon Burford. The appellate court affirmed, finding that Kansas had established its own elaborate review system in that area, id. at 860, and that Kansas statutes provide for adequate state court review of Corporation Commission orders. Id. at 861.

Upon review, this Court has concluded that issues of groundwater depletion and allocation also qualify as a highly technical and complex subject matter as to which Oklahoma has established its own elaborate review system. Further, Oklahoma provides for appellate review, first to a district court and ultimately to the state supreme court, of agency orders. See 75 O.S. §318 et seq. Therefore, the Court has concluded that it should abstain as regards issues necessarily determined in the Board's Order.

The Court notes areas not so preempted. Plaintiff points to paragraph 6B of the Findings of Fact in which the Board drew a

¹Summary taken from Bd. of Cty. Commissioners v. Hayden, 715 F.Supp. 313, 314 (D.Kan. 1989).

distinction between waste by depletion (the Board found in 6A this would not occur), and adverse impact caused by depletion of the groundwater basin (the Board found there to be inconclusive evidence on this point). Plaintiff argues that this Court may, under the broader concept of "nuisance", consider evidence on this point, despite the Board having already made a finding of no waste. Plaintiff has cited no authority for the proposition that a court may find a nuisance from groundwater depletion when an administrative body has declared there to be no waste of groundwater. However, the Court at this time does not consider it necessary to abstain from hearing evidence on the issue. For preliminary injunction purposes, the evidence presented is insufficiently conclusive to grant the injunction.

Also, plaintiff notes Findings of Fact 7A and 7B discussing pollution of groundwater through chicken excrement leaching through straw litter. However, the bulk of plaintiff's evidence before this Court concerned leaching through straw litter in the chicken houses themselves. The Board affirmatively found that waste of groundwater by pollution would not occur in that circumstance. In Conclusion of Law 7B, the Board discussed pollution caused by use of the litter as fertilizer on surrounding farms, as opposed to use in the chicken houses. Therefore, plaintiff is not precluded from presenting evidence on this narrow issue. Insufficient evidence is before this Court to grant a preliminary injunction on the issue.

As already noted, the Board also placed such issues as airborne contamination, flies and odors outside the scope of its proceedings. The affidavits of various property owners, submitted by plaintiffs, reflect a great deal of concern about such matters, but such do not constitute proof. At the trial on the merits, plaintiff may also present evidence on these issues.

A nuisance is such a use of property or such a course of conduct which transgresses the just restrictions upon use or conduct which the proximity of other persons or property imposes. Brisco v. Harper Oil Co., 702 P.2d 33 (Okla. 1985). See also 50 O.S. §1. In Cloer v. Gillespie, 386 P.2d 1015 (Okla. 1963), the court quoted with approval from AmJur 2d the statement that the law of nuisance provides no redress of annoyance and injury which are merely consequential on the legitimate use of property. Id. at 1018. Most critical at this stage is the fact that plaintiffs have not shown irreparable injury. Speculative injury does not constitute a showing of irreparable harm. Public Serv. Co. of N.H. v. Town of W. Newbury, 835 F.2d 380, 383 (1st Cir. 1987). Further, if the Court determines after a full trial that the chicken houses do constitute a nuisance, they will be ordered removed or perhaps modified. At that time, any flies or odors caused thereby would cease. Plaintiff has not met its high burden for the granting of a preliminary injunction.

It is the Order of the Court that the motion of the plaintiff for temporary restraining order, treated as a request for preliminary injunction, is hereby DENIED.

It is the further Order of the Court that the motion of the defendants to abstain is hereby granted in part and denied in part, as detailed above.

IT IS SO ORDERED this 30th day of January, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 30 1990

LYLE ALAN PEEK,

Plaintiff,

vs.

GARL WILLIS; TIM EWTON; and THE
CITY OF SAND SPRINGS, OKLAHOMA,
a municipal corporation,


Defendants.

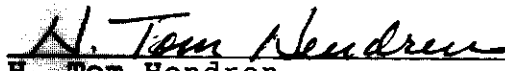
Case No. 89-C-608-C

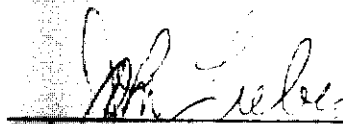
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

All parties to this action hereby stipulate that any and all causes of action and claims against Garl Willis, Tim Ewton and the City of Sand Springs are hereby dismissed with prejudice.


Lyle Alan Peek, Plaintiff


H. Tom Hendren
Attorneys for Plaintiff


John H. Lieber
Attorney for Defendants,
Garl Willis, Tim Ewton, and
The City of Sand Springs

FILED

JAN 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM AUTOMOBILE
INSURANCE COMPANY

Plaintiff,

vs.

No. 85-C-1142-E ✓

MELISSA GREER and FRANK
GREER

Defendants.

ORDER

This is a declaratory judgment action to determine the benefits under four automobile insurance policies. The issues have arisen as a result of an auto accident in which Melissa Greer was injured. Greer has also brought an action in the state district court for Payne County, Case No. C-85-620, alleging negligence on the part of the driver of the automobile in which she was injured and the alleged principals, Oklahoma State University and the Oklahoma Board of Regents.

The court previously entered judgment against State Farm on the two issues presented, holding: (1) Greer was not an insured under the terms of the policies issued to her father because she was "emancipated" as that term is defined by Oklahoma law, Okla. Stat. Ann. tit.10 §10; and (2) the vehicle was not an uninsured vehicle under the terms of the policies because the policy provisions excluded uninsured/underinsured coverage for government-owned vehicles.¹ Greer made a timely request that the court

¹Memorandum Order of April 10, 1987.

reconsider these conclusions, raising public policy issues for the first time. Following briefing of the issues raised by defendants the court certified the public policy question regarding government-owned vehicles to the Oklahoma Supreme Court.² The supreme court answered the certified question July 18, 1989. In response defendants have moved the court to dismiss this case or to abstain from the emancipation question in favor of resolving that question in the Payne County action. The court will briefly discuss the facts of this case before turning to the questions at issue.

The Facts

The Oklahoma Supreme Court succinctly stated the facts of this case in its Answer to the certified question and, this court will simply adopt and reiterate the facts as related in that opinion.

Frank Greer was the named insure on four policies of automobile insurance issued by State Farm. Three of the policies provided for uninsured motorist coverage of \$25,000 per person and \$50,000 per accident. The fourth policy provided for uninsured motorist coverage of \$100,000 per person and \$300,000 per accident. All of these policies were in effect when Greer's daughter, Melissa Greer, was injured while a passenger in a vehicle owned by Oklahoma State University (university).

²The court did not believe that the emancipation issue presented a public policy question needing to be answered by the Oklahoma Supreme Court. The court has concluded, however, that the emancipation issue deserves further consideration, for reasons other than public policy.

Melissa Greer has sued the university, the driver of the vehicle and State Farm in Payne County on the theory that the university and the driver were underinsured motorists as defined by Okla. Stat. Ann. tit 36 §3636 at the time of the accident and, therefore, she should be entitled to the uninsured motorist coverage provided by the State Farm policies issued to Frank Greer. In response State Farm brought this action seeking declaratory relief that the university vehicle in which Melissa Greer was a passenger when the accident occurred was not an uninsured motor vehicle as defined in the State Farm insurance policies issued to Frank Greer and, that Melissa Greer was not an insured as that term was defined under those same policies.

The Certified Question

The Oklahoma Supreme Court answered the certified question in the affirmative, stating that the policies' uninsured vehicle definition that sought to exclude government-owned vehicles violates the public policy of Oklahoma and, is therefore, void and unenforceable. State Farm Automobile Insurance Company v. Greer, No. 70, 212 (July 18, 1989) (Opala, J., dissenting). Accordingly, the Order of April 10, 1987 is vacated where this court found that the university-owned vehicle was not an "uninsured vehicle" under the policies' terms.

The Question Whether Melissa Greer is an Insured

The question whether Melissa Greer is insured under the four policies turns on whether she is emancipated as a matter of law.

The court previously held that Greer was emancipated as a matter of law because she had obtained majority age at the time of the accident, relying on Okla. Stat. ann. tit 10 §10. Defendants ask the court to reconsider this issue or, in the alternative, to dismiss or abstain from deciding the issue in favor of the state court action.


Although the Oklahoma Supreme Court held, in Daubert v. Moseley, 487 P.2d 353 (1971), that emancipation is a matter of law, other courts have held the issue to be one of fact, see e.g., Tencza v. Aetna Cas. & Surety Co., 527 P.2d 97 (Ariz. 1974), and Defendants recently have supplied the court with decisions indicating that the question in Oklahoma may not be one purely of law. The Oklahoma Supreme Court has not stated that all children reaching majority are emancipated and, in fact, there is little guidance in Oklahoma law regarding what constitutes emancipation as a matter of law. It has been held in other states that the attainment of majority creates a presumption of emancipation because at that age a person is presumed to possess the physical and mental capabilities to support herself, to establish her own residence and, in general, to manage her own affairs. e.g., Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983); Newburgh v. Arrigo, 443 A.2d 1031 (N.J. 1982); Siravo v. Siravo, 424 A.2d 1047 (R.I.1981). Despite this presumption, the court is aware of at least one case where, in the context of construing a similar insurance policy, a court has held that the meaning of the term "unemancipated" may include those who have attained the age of majority. State Farm Mutual Auto Ins. Co. v. Differding, 360 N.E.2d 522 (Ill. App. 1977)

rev'd on other grounds, 370 N.E.2d 543 (Ill. 1977).

Because recent cases in Oklahoma cast doubt on the emancipation issue in this case, the court believes that its previous judgment should be vacated to allow the state court to resolve the emancipation issue. Further, a dismissal of this case without prejudice is the most appropriate exercise of the court's discretion at this juncture for several reasons. First, the underlying Payne County case has proceeded to the point where it is ready to be tried so, this issue can be resolved expediently. Second, this court already has certified one question in this case and a second certified question would only further prolong the outcome. Finally, by allowing the issue to be addressed in the state court, the issue can be presented to the appellate courts on a full record. see, Carnegie-Mellon University v. Cohill, ___ U.S. ___, ___, 108 S.Ct. 614, 618 (1988) (in cases involving pendant state claims a federal court should weigh at every stage of the litigation the values of judicial economy, convenience, fairness and comity to decide whether to exercise jurisdiction).

IT IS THEREFORE ORDERED that the previous judgment of the court entered April 22, 1987 is vacated and defendants' motion to dismiss or abstain is sustained. This action is dismissed without prejudice.

ORDERED this 29th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 29 1990

JOHANNA R. MILES, DR. WALLIS P.
PARKER, JR., GLENDA M. TERRY,
BRENDA SIBOLE AND DAVID L. POTTS

Plaintiffs,

v.

ROCKWELL INTERNATIONAL
CORPORATION,

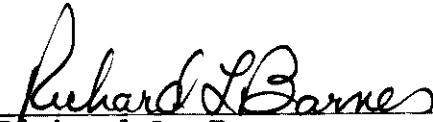
Defendant.


Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 87-C-1022 B

**PLAINTIFF MILES' VOLUNTARY
DISMISSAL BY STIPULATION**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate and agree that all the claims of Plaintiff Miles herein be dismissed with prejudice to the refiling thereof and that Plaintiff Miles and Defendant shall each bear their own costs and expenses herein.


Richard L. Barnes
2121 South Columbia, Suite 700
Tulsa, Oklahoma 74114
(918) 745-6625
ATTORNEY FOR PLAINTIFF MILES


Craig W. Hoster
Baker, Hoster, McSpadden, Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103
ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN PONTIOUS and MARGARET
PONTIOUS,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY,
INC.,

Defendant.

Case No. 89-C-402-B

ORDER OF DISMISSAL

The Court finds that based upon the Stipulation for Dismissal Without Prejudice entered into herein by the parties, the claim of John Pontious is hereby dismissed without prejudice.

S/ THOMAS R. BRETT

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES OWEN WILLIAMSON, JR.,

Defendant.

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89-CR-138-01-C

89-C-422-C

JAN 29 1990

Jack C. Shorr, Clerk
U.S. DISTRICT COURT

ORDER


The Court has for consideration the Report and Recommendation of the United States Magistrate filed January 9, 1990 in which the Magistrate recommended that the Defendant's Motion to Vacate, Set Aside, or Correct a Sentence pursuant to §2255 be dismissed without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Defendant's Motion to Vacate, Set Aside, or Correct a Sentence pursuant to §2255 is dismissed without prejudice.

Dated this 29 day of January, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 2, 1990

Jack C. Silvers, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 89-C-713-B

THIRTY-TWO THOUSAND THREE
HUNDRED THIRTY-FOUR DOLLARS
(\$32,334.00) IN UNITED
STATES CURRENCY;

and

ONE 1985 FORD BRONCO,
VIN 1FMDU15H9FLA20308;

and

ONE 1986 GMC VANDUR R/V,
VIN 1GDEG25H6G7503962;

and

ONE 1986 LINCOLN 4-DOOR,
VIN 1LNBP96F9GY644883,

Defendants.

JUDGMENT OF FORFEITURE

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant properties,

THIRTY-TWO THOUSAND THREE
HUNDRED THIRTY-FOUR DOLLARS
(\$32,334.00) IN UNITED
STATES CURRENCY;

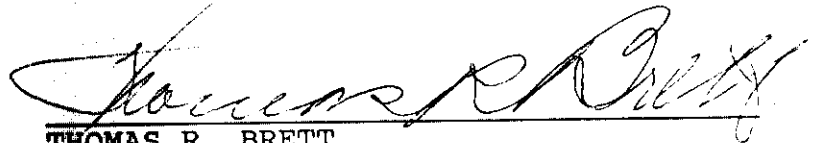
and

ONE 1986 GMC VANDUR R/V,
VIN 1GDEG25H6G7503962;

and

ONE 1986 LINCOLN 4-DOOR,
VIN 1LNBP96F9GY644883,

and against all persons interested in such defendant properties and that the defendant properties be, and the same are hereby forfeited to the United States of America for disposition by the United States Marshal according to law.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

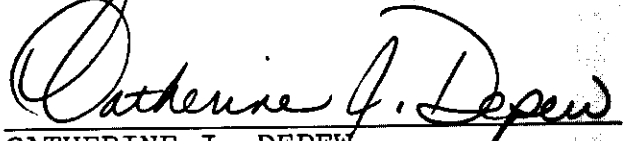
APPROVED:

THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
00420

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

POLYKEN TECHNOLOGIES, A Division)
of the Kendall Company,)

Plaintiff,)

v.)

Case No. 89 C-610 B

TAPE SPECIALISTS, INC., an)
Oklahoma corporation,)

Defendant.)

ADMINISTRATIVE CLOSING ORDER

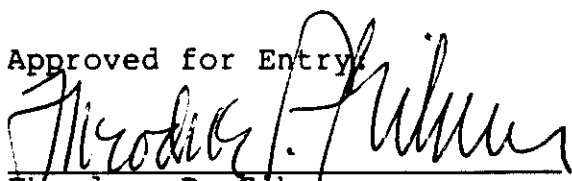
After a status conference held on the 10th day of January, 1990, and the Court hearing the announcement that a settlement of this case has been reached but has not been fully consummated,

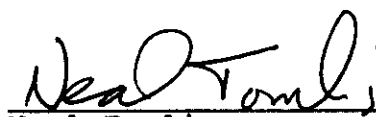
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall administratively terminate this action in his records, without prejudice to the rights of the parties to re-open the proceedings for good cause shown, upon the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. If neither Plaintiff nor Defendant has re-opened the case for the purpose of obtaining a final determination herein on or before December 31, 1990, this action shall be deemed dismissed with prejudice.

ORDERED this 26th day of January, 1990.


UNITED STATES DISTRICT JUDGE

Approved for Entry


Theodore P. Gibson
Tips & Gibson
525 S. Main, Suite 210
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Tulsa, Oklahoma 74103
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Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE FIRST NATIONAL BANK AND
TRUST COMPANY OF VINITA,

Plaintiff,

vs.

DELBERT E. BERRY, et al.,

Defendants.

Civil Action No. 89-C-809-C

Craig County District Court
Case No. C-89-160

FILED

JAN 26 1990

JOURNAL ENTRY OF JUDGMENT

John C. Silver, Clerk
U.S. DISTRICT COURT

NOW, on this 26th day of January, 1990, this matter came on before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, the Plaintiff herein appearing by and through its attorneys of record, the law firm of Logan, Lowry, Johnston, Switzer, West & McGeady, the Defendant, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, appearing through their counsel, Randolph P. Stainer of the law firm of Stainer and Stainer, and the Defendant, United States of America, ex rel., Farmers Home Administration, appearing by and through its attorney of record, Peter Bernhardt, Assistant United States Attorney for the Northern District of Oklahoma; whereupon, the Court proceeded to hear the evidence in said cause, including the testimony of witnesses duly sworn in open Court, and, at the conclusion thereof, found as follows:

1. That the Plaintiff is a national banking association, having its principal place of business located in the City of Vinita, Craig County, State of Oklahoma.

2. That the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, are natural persons residing within Craig County, State of Oklahoma; and that the Promissory Notes and Security Agreements which form the gravamen of Plaintiff's cause of action were executed in favor of the Plaintiff at the Plaintiff's place of business in Vinita, Craig County, Oklahoma.

3. That on or about the 18th day of April, 1978, the Defendants herein, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, made, executed and delivered unto the Plaintiff herein, The First National Bank and Trust Company of Vinita, a certain Promissory Note in the sum of TWENTY-ONE THOUSAND NINE HUNDRED FORTY-FIVE and 92/100 DOLLARS (\$21,945.92); and that as security for the repayment of said debt, together with all extensions and renewals thereof and all other present or future direct or continued liabilities of the Berrys to the Bank, of any nature whatsoever, said Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, made, executed and delivered unto the Plaintiff a Security Agreement granting unto said

Plaintiff a security interest in and to all of their equipment and machinery then owned or thereafter acquired, a comprehensive list of which is attached hereto, marked Exhibit "A" and made a part hereof by reference.

4. That the security interest granted unto the Plaintiff by means of the Security Agreement referred to in the preceding paragraph was subsequently duly perfected by the Plaintiff through the filing of the requisite financing statements with the requisite custodians of public records; and that said security interest has remained continuously perfected up through and including the date hereof.

5. That subsequent to the execution and deliver of the aforesaid Promissory Note and Security Agreement to the Plaintiff, the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, made, executed and delivered unto the Plaintiff additional Promissory Notes representing both renewals of the pre-existing indebtedness, as well as loans of additional sums to the Defendants; and that there presently remains due, owing and unpaid unto the Plaintiff from said Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, the sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTEEN and 48/100 DOLLARS (\$41,118.48), said sum representing both principal and accrued interest as of the 22nd day of November, 1988,

together with additional interest accruing thereon from and after said date at the rate of NINE and 28/100 DOLLARS (\$9.28) per day, until paid.

6. That in addition to the other sums presently due and owing unto the Plaintiff from the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, said Defendants are further indebted to the Plaintiff under the terms of the Promissory Notes and Security Agreement herein sued upon for all costs incurred by the Plaintiff in attempting to collect the aforesaid debt, including a reasonable attorneys' fee for the benefit of Plaintiff's attorneys in the sum of \$ 5,000.00.

7. That the Plaintiff herein, The First National Bank and Trust Company of Vinita, is the holder and possessor of a first priority security interest in and to the personal property described in Exhibit "A" attached hereto; and that the Defendant, United States of America, ex rel. Farmers Home Administration, is the holder of a second and subsequent security interest in and to said personal property securing the repayment of a certain debt owed by the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, in the sum of \$ 568,748.95, said sum representing both principal and accrued interest as of the 6th day of October,

1989, together with additional interest accruing thereon from and after said date at the rate of \$ 71.7104 per day, until paid in full.

8. That by reason of the aforesaid default by the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, in paying the indebtedness due and owing to the Plaintiff, the Plaintiff is entitled to a Decree of this Court directing the foreclosure of its security interest in and to the personal property described in the attached Exhibit "A", and further directing that the Sheriff of Craig County, Oklahoma, sell said personal property in the manner provided by law, after due and proper notice thereof to the Defendants; and that the proceeds deriving therefrom be thereafter applied as follows, to-wit:

FIRST: In payment of the costs of this action, accrued and accruing, including a reasonable attorneys' fee for the benefit of Plaintiff's attorneys in the sum of \$ 5,000.00 .

SECOND: In payment to the Plaintiff of the amount of its judgment herein awarded in the sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTEEN and 48/100 DOLLARS (\$41,118.48), said sum representing both principal and accrued interest as of the 22nd day of November, 1988, with additional interest accruing thereon from and after said date at the rate of NINE and 28/100 DOLLARS (\$9.28) per day, until paid in full.

THIRD: In payment to the Defendant, United States of America, ex rel. Farmers Home Administration, in the sum of \$ 568,748.95,

said sum representing both principal and accrued interest as of the 6th day of October, 1989, with additional interest accruing thereon from and after said date at the rate of \$ 71.7104 per day, until paid in full.

FOURTH: The balance, if any there be, to await further Order of this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the Plaintiff herein, The First National Bank and Trust Company of Vinita, have and recover judgment against the Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, in rem only, in the sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTEEN and 48/100 DOLLARS (\$41,118.48), said sum representing both principal and accrued interest as of the 22nd day of November, 1988, together with additional interest accruing thereon from and after said date at the rate of NINE and 28/100 DOLLARS (\$9.28) per day, until paid in full, together with all costs of this action, accrued and accruing, including a reasonable attorneys' fee for the benefit of Plaintiff's attorneys in the sum of \$ 5,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Plaintiff is the owner and holder of a valid first, prior and paramount security interest in and to the personal property described in Exhibit "A" attached hereto and made a part hereof by reference; and that a Special Execution and Order for Sale should be, and the same is hereby ordered to

be issued to the Sheriff of Craig County, Oklahoma, commanding said Sheriff to levy upon the personal property described in attached Exhibit "A" hereto, directing said Sheriff to sell the same as provided by law, after due and proper legal notice thereof to said Defendant, and that the proceeds deriving from said sale be thereafter distributed as follows, to-wit:

FIRST: In payment of the costs of this action and of said sale, including the payment of a reasonable attorneys' fee for the benefit of Plaintiff's attorneys in the sum of \$5,000.00.

SECOND: In payment to the Plaintiff, The First National Bank and Trust Company of Vinita, Vinita, Oklahoma, in satisfaction of the judgment herein awarded to said Plaintiff against said Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, in the sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTEEN and 48/100 DOLLARS (\$41,118.48).

THIRD: In payment to the Defendant, United States of America, ex rel. Farmers Home Administration, in the sum of \$568,748.95, said sum representing both principal and accrued interest as of the 6th day of October, 1989, together with additional interest accruing thereon from and after said date at the rate of \$71.7104 per day, until paid in full.

FOURTH: The balance, if any there be, to await the further Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that from and after the sale of the aforesaid personal property, and by virtue of this Judgment and Decree, that the

Defendants, Delbert E. Berry, one and the same person as Delbert Berry, and Cathy Berry, husband and wife, and the United States of America, ex rel. Farmers Home Administration, and all persons claiming by, through or under them, or any of them, are hereby forever barred and foreclosed of and from any and all right, title, lien, estate, encumbrance, claim, interest or equity in or to said personal property, or any part thereof.

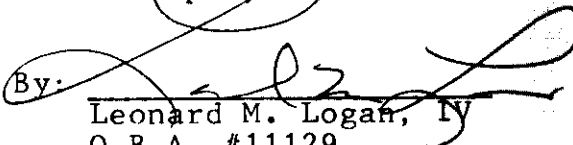
IT IS SO ORDERED, ADJUDGED AND DECREED BY THE COURT this 26 day of ~~December~~ ^{January} 1990, 1989.


UNITED STATES DISTRICT JUDGE

APPROVED:

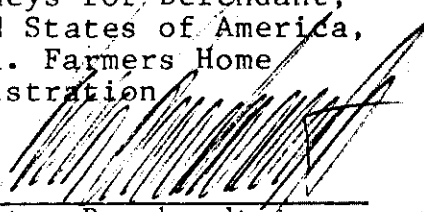
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ex rel. Farmers Home
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Attorneys for Defendants,
Delbert E. Berry and
Cathy Berry

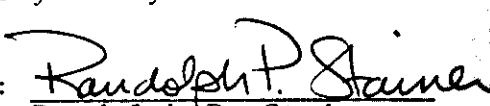
By: 
Randolph P. Stainer
O.B.A. #8537

EXHIBIT "A"

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>KIND</u>	<u>MANUFACTURER</u>	<u>SIZE & TYPE</u>	<u>CONDITION</u>	<u>YEAR OF MANUFACTURE</u>	<u>VALUE</u>
1.	1	Springtooth	Crustbaste	24'	G		\$ 500.
2.	1	Auger	Hutchinson	6"x24'	G	80	350.
3.	1	Chisel Plow	IHC	5500	G	80	2,800.
4.	1	Post Driver	Shaver	10'	G	78	200.
5.	1	Bushhog	Terrain King	15'	F	73	500.
6.	1	Grain Drill	JD	16 x 8	F	65	2,500.
7.	1	Row Planter	JD	1300	F	69	500.
				6 Row			
8.	1	Cultivator	JD	6 Row	F	74	450.
9.	1	Rotary Hoe	JD	400	F	74	1,500.
10.	1	Crop Sprayer	Kuker	200 Gal	F	68	250.
				12 Row			
11.	1	Seed Cleaner	Clipper	#27	G	76	200.
12.	1	Platform Scales	Fairbanks	1000#	G	76	200.
13.	1	Welder	Lincoln	225 Amp	G	75	75.
14.	1	Bag Closer	Fishbone		G	76	100.
15.	1	Tractor	IHC	4366	G	77	10,000.
				4 x 4			
16.	1	Tractor	IHC	1066	G	73	6,800.
				Cab-Dual Wheel			
17.	1	Tractor	JD	2630	G	74	3,200.
18.	1	Combine	JD	6600	G	75	9,000.
19.	1	Grain Cart	JD	400 Bu.	F	76	1,000.
				1210			
20.	1	Plow	IHC	8 x 18'	G	77	750.
21.	1	Field Cultivator	JD	24'	G	76	4,000.
22.	1	Wing Disc	JD	23'	F	74	3,800.
23.	1	Chisel Plow	JD	16'	F	73	1,100.
24.	1	Roller	Brillion	15'	G	74	2,500.
		Harrow					
25.	1	Drag	JD	24'	F	65	450.
		Harrow					
26.	1	Anhydrous Attachment		24'	G	65	50.
27.	1	Hay Mower	Kuhn	8'	G	77	500.
28.	1	Air Compressor	Ward	2 hp	G	72	200.
29.	1	Drill Press	Chicago	12 speed	G	76	150.
30.	1	Space Heater	JDA 150		G	74	100.
31.	1	Squeeze	Big M		G	74	850.

EXHIBIT "A"

32.	1	Chute Portable Feeder	Pride of Farm	3 Ton	G	74	500.
33.	1	Trailer	1.5 Ton U.S. Army & Fuel Tanks 2 Electric Pumps		G		650.
34.	1	Garden Tractor	IHC	1450	G	79	1,000.
35.	1	Disk	Rhino	90	G	79	<u>6,000.</u>
							\$76,925.

EXHIBIT "A"

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THE FIRST NATIONAL BANK
& TRUST CO. OF VINITA
P. O. BOX 407
VINITA, OK 74301

12/07/89

RE: DELBERT BERRY

		HOURS
09/19/88	LML LETTER FROM RANDOLPH STAINER CONFERENCE WITH TJM PHONE CONFERENCE WITH NANCY BLEVINS	.50
09/20/88	LML PHONE CONFERENCE WITH PETER BERNHARDT REVIEW OF FILE	.50
09/21/88	LML LETTER FROM PETER BERNHARDT REVIEW OF JUDGE WILSON'S RULING	.75
	LML PHONE CONFERENCE WITH PETER BERNHARDT	.25
09/22/88	LML PHONE CONFERENCE WITH PETER BERNHARDT	.25
	LML CONFERENCE WITH ROD MOSS REVIEW OF INACTIVE FILES IN DOCUMENT STORAGE LEGAL RESEARCH	.75
09/23/88	LML REVIEW OF FILE LEGAL RESEARCH	.25
09/26/88	LML PHONE CONFERENCE WITH PETER BERNHARDT REVIEW OF FILE	.25
	LML REVIEW OF LOAN DOCUMENTATION LEGAL RESEARCH	.75
09/27/88	LML PHONE CONFERENCE WITH PETER BERNHARDT	.25
09/28/88	LML CONFERENCE WITH LARRY GREEN	.25
09/30/88	LML LEGAL RESEARCH	.50
10/06/88	LML REVIEW OF CLOSED FILES	.50
	LML LEGAL RESEARCH RE: NEW DECISIONS ON AVOIDANCE ISSUE	.50

06/09/89	LML	PREPARE SECURITY DOCUMENTATION RE: FMHA	.25
	LML	LEGAL RESEARCH RE: FUTURE ADVANCES SECURITY FOR FUTURE AND RELATION BACK DOCTRINE	.50
	LML	DICTATION OF LETTER TO STEPHEN GREGORY WITH FMHA DICTATE LETTER TO PETER BERNHARDT	.50
06/13/89	LML	LEGAL RESEARCH RE: APPELLATE BANKRUPTCY PROCEEDING	.50
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
06/14/89	LML	LETTER FROM BANKRUPTCY COURT CLERK REVIEW OF ORDER	.25
06/15/89	LML	LETTER FROM RANDY STAINER RE: APPEAL LEGAL RESEARCH RE: APPELLATE PROCEDURE	.75
06/21/89	LML	LEGAL RESEARCH RE: PRIORITY OF SECURITY INTERESTS PHONE CONFERENCE WITH JACK NICHOLS LEGAL RESEARCH AT COURTHOUSE RE: OTHER SECURED PARTIES -BOTH PRIOR AND SUBSEQUENT LIEN CREDITORS	1.50
	LML	REVIEW OF VARIOUS LIEN HOLDER PRIORITIES	.25
06/22/89	LML	PHONE CONFERENCE WITH RANDY STAINER	.25
07/10/89	LML	REVIEW OF APPELLATE DOCUMENTS LEGAL RESEARCH RE: DESIGN. OF RECORD	.25
	LML	CONFERENCE WITH DKS RE: APPEAL AND PREPARATION OF DESIGN. OF RECORD	.25
08/07/89	LML	CONFERENCE WITH TJM RE: STATUS OF CASE	.25
08/21/89	LML	CONFERENCE WITH TJM PHONE CONFERENCE WITH PETER BURNHARDT	.25
08/22/89	LML	LETTER FROM RANDY STAINER REVIEW OF APPELLANT'S BRIEF	.25
08/30/89	DKS	LEGAL RESEARCH AND WORK ON BRIEF IN APPEAL TO U. S. DISTRICT COURT LEGAL RESEARCH AT GRDA AND AT COUNTY LAW LIBRARY	7.50
08/31/89	DKS	LEGAL RESEARCH WORK ON BRIEF	.75
09/01/89	DKS	LEGAL RESEARCH AND FINISH 1st DRAFT OF BRIEF ON APPEAL	8.00
09/04/89	DKS	WORK ON BRIEF TRIP TO TULSA AND DELIVER PACKAGE FOR COURT	7.00

10/07/88	LML	PHONE CONFERENCE WITH U. S. ATTORNEY PETER BERNHARDT	.25
	LML	CONFERENCE WITH TJM	.25
	LML	PHONE CONFERENCE WITH PAUL THOMAS	
		PHONE CONFERENCE WITH BANKRUPTCY COURT CLERK	
		PHONE CONFERENCE WITH RANDOLPH STAINER	.50
10/11/88	LML	DICTATION OF LETTER TO PAUL THOMAS REVIEW OF DOCUMENTS, ETC.	.25
10/12/88	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
10/13/88	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
10/17/88	LML	DRAFT APPLICATION, ORDER, ORDER FOR HEARING AND NOTICE OF HEARING	1.00
10/18/88	LML	DRAFT APPLICATION, ORDER, ORDER FOR HEARING	.50
10/19/88	LML	PHONE CONFERENCE WITH RANDY STAINER	
		PHONE CONFERENCE WITH PETER BERNHARDT	.50
10/21/88	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
10/26/88	LML	DICTATION OF LETTER TO JUDGE WILSON	
		PHONE CONFERENCE WITH PETER BERNHARDT	.75
	LML	DICTATION OF LETTER TO JUDGE WILSON AND ATTACHMENT	.75
11/01/88	LML	LETTER FROM MICKEY WILSON REVIEW OF ORDER	.50
11/02/88	LML	LETTER FROM JUDGE WILSON REVIEW OF ORDER	.25
	LML	CONFERENCE WITH TJM	.25
11/03/88	LML	LETTER FROM BANKRUPTCY COURT CLERK	.25
	LML	REVIEW OF FILE	
		LEGAL RESEARCH	.25
11/09/88	LML	LEGAL RESEARCH AND REVIEW OF DOCUMENTS	.50
11/11/88	LML	LETTER FROM RANDY STAINER	.25
11/15/88	DKS	PHONE CONFERENCE WITH RANDY STAINER LETTER	.25
11/16/88	LML	REVIEW OF MEMO FROM DKS	
		LEGAL RESEARCH RE: RESPONSE TO MOTION FILED BY R. STAINER	.50
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.50
11/17/88	LML	LEGAL RESEARCH	.75

11/21/88	LML	LETTER FROM AND REVIEW OF ORDER FROM JUDGE WILSON PHONE CONFERENCE WITH BUD WYATT REVIEW OF FILE LEGAL RESEARCH PHONE CONFERENCE WITH ROD MOSS CONFERENCE WITH TONY FRITZ REVIEW OF DOCUMENTS	2.00
12/02/88	LML	LEGAL RESEARCH	.50
12/05/88	LML	LETTER TO BANKRUPTCY COURT CLERK REVIEW OF ORDER	.25
	LML	LEGAL RESEARCH RE: EXEMPTION CLAIM	.50
12/12/88	LML	PHONE CONFERENCE WITH PETER BERNHARDT LEGAL RESEARCH	.50
	LML	LEGAL RESEARCH	1.00
12/13/88	LML	LETTER FROM RANDY STAINER REVIEW OF FILE LEGAL RESEARCH	.75
12/16/88	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
12/20/88	LML	LEGAL RESEARCH RE; SPECIAL LIEN PRIORITY DISPUTE RE: EQUITABLE SUBROGATION	1.25
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
	LML	PHONE CONFERENCE WITH TONY FRITZ RE: SUBROGATION PAYMENTS	.25
12/22/88	LML	CONFERENCE WITH TONY FRITZ REVIEW OF BANK'S FILES	.25
12/23/88	LML	REVIEW OF ORDERS AND FMHA SECURITY DOCUMENTATION CONFERENCE WITH TONY FRITZ OBTAIN COPY OF BANK RECORDS PHONE CONFERENCE WITH RANDY STAINER	1.00
03/30/89	LML	REVIEW OF FILE AND LEGAL RESEARCH AS TO CONTINUITY OF PERFECTION AND VALIDITY OF LIEN COVERING FUTURE LOANS	1.00
	LML	PHONE CONFERENCE WITH PETER BERNHARDT WITH FMHA	.25
04/04/89	JDL	PHONE CONFERENCE WITH JUDGE MICKEY WILSON (TULSA)	.25
	TJM	LEGAL RESEARCH BERRY LIEN AVOIDANCE COURT HEARING BEFORE JUDGE WILSON	3.50
	LML	ATTEND HEARING BEFORE JUDGE WILSON WITH TJM	1.00
04/05/89	LML	REVIEW OF PLEADINGS FROM STORAGE LEGAL RESEARCH	.50

LML	PHONE CONFERENCE WITH JACK NICHOLS LEGAL RESEARCH RE: CONTINUITY OF PERFECTION AND VALIDITY OF LIEN COVERING FUTURE ADVANCES AND LOANS	1.00
04/07/89 LML	PHONE CONFERENCE WITH PETER BERNHARDT LEGAL RESEARCH RE: CONTINUITY OF PERFECTION LIEN COVERING FUTURE INDEBTEDNESS	1.00
04/10/89 LML	CONFERENCE WITH TJM DRAFT PETITION FOR REPLEVIN DRAFT ORDER AND NOTICE OF APPLICATION FOR PRE-JUDGMENT DELIVERY OF SPECIFIC PROPERTY	1.50
LML	REVIEW OF FINANCIAL AND SECURITY DOCUMENTATION FURNISHED BY FMHA REVISION OF PETITION, ORDER AND NOTICE	1.00
04/13/89 LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
04/14/89 LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
LML	REVISION OF PLEADINGS PHONE CONFERENCE WITH PETER BERNHARDT	1.00
04/24/89 LML	PHONE CONFERENCE WITH RANDY STAINER	.25
04/27/89 LML	LEGAL RESEARCH RE: FAILURE OF DEBTOR TO FILE ELECTION OF EXEMPT PROPERTY	.50
LML	DRAFT MOTION TO REQ. DEBTOR TO FILE ELECTION OF EXEMPT PROPERTY, ORDER AND NOTICE	1.25
04/28/89 LML	LEGAL RESEARCH	.25
05/03/89 LML	PHONE CONFERENCE WITH RANDY STAINER	.25
05/08/89 LML	LEGAL RESEARCH RE: ADEQUATE PROTECTION	.50
05/10/89 LML	REVIEW OF FILES AND LOAN DOCUMENTATION	.50
05/11/89 LML	REVIEW OF COURT FILES AT BANKRUPTCY COURT	.75
05/12/89 LML	REVIEW OF PROMISSORY NOTES	.25
LML	LEGAL RESEARCH	1.00
LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
LML	DRAFT JOINT APPLICATION FOR ADEQUATE PROTECTION ORDER FOR HEARING AND NOTICE OF HEARING	.75
LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25

05/15/89	LML	REVISION OF APPLICATION, ORDER AND NOTICE OF HEARING	
		DICTATE LETTER TO PETER BERNHARDT	.75
	LML	REVISION OF LETTER TO PETER BURNHARDT	
		REVIEW OF APPLICATION, ORDER AND NOTICE	.50
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
05/16/89	LML	REVISION OF LETTER TO PETER BERNHARDT	.25
05/23/89	LML	LETTER FROM BANKRUPTCY COURT CLERK	
		REVIEW OF ORDERS AND JOURNAL ENTRIES	
		LEGAL RESEARCH	.50
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
05/30/89	LML	LETTER FROM PETER BERNHARDT	.25
05/31/89	TJM	LEGAL RESEARCH - WYATT AND FNB (KYLE & GREEN) FILES ON PENDING MOTIONS, DEBTOR SCHEDULE, ETC.	.75
06/01/89	TJM	LEGAL RESEARCH (WYATT CLOSED FILES) AND WORK WITH LEONARD RE: HEARING STRATEGY	1.25
	LML	LETTER FROM RANDY STAINER	
		REVIEW OF PLEADINGS	
		LETTER FROM BANKRUPTCY COURT CLERK	.25
06/06/89	LML	LEGAL RESEARCH RE: STAY OF CREDITOR ACTION PENDING APPEAL	.50
	LML	REVIEW OF DEBTOR'S MOTION FOR STAY	.25
	LML	LEGAL RESEARCH RE: ADEQUATE PROTECTOIN REPLACEMENT LIEN AND STAY PENDING APPEAL	.50
	LML	LEGAL RESEARCH RE: STAY PENDING APPEAL	.25
06/07/89	LML	LEGAL RESEARCH AND PREPARE FOR HEARING PHONE CONFERENCE WITH PETER BERNHARDT	1.25
	LML	LEGAL RESEARCH RE: ADEQUATE PROTECTION AND SUPER PRIORITY	.75
06/08/89	LML	HEARING IN BANKRUPTCY COURT	3.75
	LML	CONFERENCE WITH TONY FRITZ RE: LITIGATION STRATEGY	.25
	LML	CONFERENCE WITH TJM RE: STRATEGIES OF LITIGATION ON APPEAL	
		POSSIBILITY OF SETTLEMENT	.50
	TJM	CONFERENCE WITH LML RE: BERRY	.50

09/12/89	LML	REVIEW OF APPELLEE'S BRIEF CONFERENCE WITH DKS	.25
09/14/89	TJM	DRAFT FINAL DRAFT OF PETITION, ETC. IN COURT - FILE COMPLAINT, NOTICE, GET SUMMONS ISSUED, GET JUDGE CLANTON TO ISSUE TEMPORARY RESTRAINING ORDER GET PAPERS TO DUTCH GARRETT TO SERVE	3.75
09/18/89	LML	LETTER FROM RANDY STAINER REVIEW OF RESPONSE BRIEF	.25
09/19/89	LML	LETTER FROM RANDY STAINER PHONE CONFERENCE WITH RANDY STAINER DRAFT APPLICATION AND ORDER FOR HEARING AND NOTICE OF HEARING	.75
	LML	FILE ORDER AND NOTICE OF HEARING	.25
09/21/89	DKS	REVIEW OF FMHA BRIEF NOTE TO TOM	.25
09/25/89	LML	DICTATION OF LETTER TO STEVE GREGORY DICTATE LETTER TO PETER BERNHARDT	.50
	LML	PHONE CONFERENCE WITH STEVE GREGORY	.25
09/26/89	LML	CONFERENCE WITH TONY FRITZ REVIEW OF DOCUMENTS	.25
10/04/89	TJM	PHONE CONFERENCE WITH JUDGE BRETT'S CLERK PHONE CONFERENCE WITH PETER BERNHARDT DRAFT LETTER TO BERNHARDT AND APPLICATION FOR EXPEDITED HEARING IN FEDERAL COURT WITH BRIEF	1.75
	LML	PHONE CONFERENCE WITH PETER BERNHARDT	.25
10/18/89	TJM	PHONE CONFERENCE WITH JUDGE COOK'S CLERK PHONE CONFERENCE WITH RANDY STAINER PHONE CONFERENCE WITH PETER BERNHARDT LEGAL RESEARCH RE: LIEN AVOIDANCE/APPEAL ISSUE	1.50
10/19/89	LML	PHONE CONFERENCE WITH RANDY STAINER	.25

10/20/89	LML	LETTER FROM FMHA - ANSWER OF USA CONFERENCE WITH TJM AND REVIEW OF FILE LEGAL RESEARCH RE: PRIORITY OF CONFLICTING SECURITY INTERESTS DRAGNET CLAUSES	.75
	LML	PHONE CONFERENCE WITH RANDY STAINER PREPARE FOR HEARING IN FEDERAL COURT	.50
10/23/89	DKS	LEGAL RESEARCH AND PREPARE FOR USD COURT ARGUMENT	6.50
	TJM	PHONE CONFERENCE WITH STAINER PHONE CONFERENCE WITH U. S. ATTORNEY (BERNHARDT) LEGAL RESEARCH RE: TAXING OF REPLEVIN BOND (EXPOSURE TO FNBV) CONFERENCE WITH LML RE: BERRY CASE CONVERSATION WITH STONER, STRATEGY RE: APPEAL AND BOND, ETC.	2.00
	LML	CONFERENCE WITH TJM REVIEW OF LOAN DOCUMENTATION	.50
	LML	REVIEW OF LOAN DOCUMENTS AND PREPARE FOR HEARING ON REPLEVIN APPLIC. TRAVEL TO TULSA CONFERENCE WITH RANDY STAINER AND DELBERT BERRY IN COURT: RETURN TO VINITA CONFERENCE WITH TJM	4.75
10/24/89	DKS	LEGAL RESEARCH AND PREPARE FOR ARGUMENT TRAVEL TO TULSA ARGUE APPEAL IN U. S. DISTRICT COURT CONFERENCE WITH PETER BERNHARDT AND RANDY STAINER: RETURN TO VINITA	4.75
	DKS	PHONE CONFERENCE WITH CLERK - S. COURT LEGAL RESEARCH RE: CERTIFIED QUESTION OF LAW PROCEDURE	1.00
	TJM	CONFERENCE WITH LML RE: SETTLEMENT	.25
	LML	DRAFT ORDER FOR IMMEDIATE DELIVERY OF COLLATERAL	.75
	LML	CONFERENCE WITH DKS RE: HEARING BEFORE MAGISTRATE	.25
10/25/89	DKS	LEGAL RESEARCH ON CERTIFIED QUESTION PHONE CONFERENCE WITH U. S. ATTORNEY'S OFFICE WORK ON ORDER	2.25
	LML	CONFERENCE WITH TJM	.25
10/26/89	DKS	CONFERENCE WITH LML LEGAL RESEARCH CONTINUE WORK ON ORDER CERTIFYING QUESTION PROOF AND REVISE	4.75
10/27/89	DKS	PHONE CONFERENCES (SEVERAL) AND LETTERS AND TELEFAXES TO BERNHARDT LEGAL RESEARCH REVISE QUESTIONS AND CERTIFIED ORDER	2.75

10/31/89	DKS	PHONE CONFERENCE WITH BERNHARDT PHONE CONFERENCE WITH CLERK	.25
11/03/89	DKS	REVIEW OF STAINER MATERIAL AND LETTER FROM BERNHARDT PHONE CONFERENCE WITH U. S. ATTORNEY'S OFFICE LETTER TO MAGISTRATE WAGNER PHONE CONFERENCE WITH BERNHARDT	1.00
11/14/89	DKS	PHONE CONFERENCES (2) WITH U. S. ATTORNEY'S OFFICE AND MAGISTRATE WAGNER'S OFFICE RE: CERTIFIED QUESTIONS	.25
	LML	PHONE CONFERENCE WITH RANDY STAINER RE: REPLEVIN ORDER	.25
12/04/89	LML	LETTER FROM FEDERAL MAGISTRATE REVIEW OF FILE PREPARE DRAFT OF DEFAULT JUDGMENT	.50

FOR CURRENT SERVICES RENDERED 131.50 \$13,156.25

EXPENSES:

10/12/88	SUM	ADVANCED U. S. DISTRICT COURT (CK. TO PAUL THOMAS FOR COPIES - TULSA)	\$5.50
12/12/88	SUM	ADVANCED COPIES - 19	3.80
05/16/89	SUM	ADVANCED COPIES - 38	7.60
06/08/89	SUM	ADVANCED MILEAGE TO TULSA AND RETURN	41.20
08/30/89	SUM	ADVANCED COPIES - 60	12.00
	SUM	ADVANCED COPIES - 41	8.20
09/01/89	SUM	ADVANCED MILEAGE TO TULSA PLUS 48 MILES	55.60
09/14/89	SUM	ADVANCED CRAIG COUNTY COURT CLERK RE: C-89-110	96.00
09/15/89	SUM	ADVANCED LEE DUTCH GARRETT RE: SERVICE ON DELBERT AND CATHY BERRY	40.00
09/19/89	SUM	ADVANCED COPIES - 6	1.20
09/25/89	SUM	ADVANCED POSTAGE	2.10
09/25/89	SUM	ADVANCED COPIES - 34	6.80
10/23/89	SUM	ADVANCED MILEAGE TO TULSA AND RETURN	41.20

10/24/89 SUM ADVANCED COPIES - 18	3.60
10/24/89 SUM ADVANCED MILEAGE TO TULSA AND RETURN	41.20
10/26/89 SUM ADVANCED - FAX OF 11 PAGES TO PETER BERNHARDT	10.25
10/27/89 SUM ADVANCED FAX OF 7 PAGES TO PETER BERNHARDT	10.00

TOTAL EXPENSES	\$386.25
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BALANCE DUE	<u>\$13542.50</u>
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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1990

JACQUELYNNE R. CLERK
U.S. DISTRICT COURT

KENNETH EARL JONES,

Plaintiff,

vs.

No. 89-C-268-B

W. B. JOHNSTON GRAIN
COMPANY, and JOHNSTON'S
PORT 33, INC.,

Defendants.

STIPULATION OF DISMISSAL

COME NOW Plaintiff and Defendants and stipulate to the
dismissal of Plaintiff's claim against Defendant W. B. Johnston Grain
Company only.

FRASIER & FRASIER

BY: 

Steven R. Hickman, OBA #4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724

GOLDSTEIN & PRICE

BY: 

Hubert I. Binowitz
818 Olive Street, Suite 1300
St. Louis, MO 63101-1567
314/421-0710

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAN 26 1990 *clt*
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CARL E. KELLER, et al,
Plaintiffs,

v.

STATE FARM FIRE & CASUALTY
COMPANY, et al,
Defendants.

89-C-626-E ✓

ORDER


The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 16, 1989 in which the Magistrate recommended that Plaintiffs' action be dismissed, with prejudice to its refiling.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, **Ordered** that Plaintiffs' action is dismissed, with prejudice to its refiling.

Dated this 25th day of January, 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JAN 26 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MASSACHUSETTS GENERAL LIFE
INSURANCE COMPANY, a
Massachusetts corporation,

Plaintiff,

vs.

JAMES C. LEAKE, SR., et al.,

Defendants.

No. 88-C-1381-E ✓

JUDGMENT


The Court entered an Order on January 10, 1990 together with Findings of Fact and Conclusions of Law dealing with the Application of Plaintiff for the allowance of attorney's fees and expenses.

In accordance with the Order of January 10, 1990, the Court hereby enters judgment for attorney's fees and expenses in favor of Plaintiff Massachusetts General Life Insurance Company for attorney's fees in the amount of \$27,756.50, legal assistants' services in the amount of \$2,645.50, and reimbursement of expenses in the amount of \$4,824.54, or a total amount of \$35,226.54.

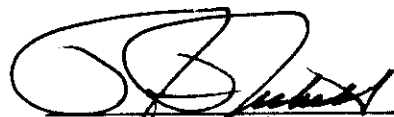
The 1988 Trustees have, in accordance with the prior Order of this Court, withdrawn the interpled funds. Accordingly, the Court directs the 1988 Trustees to reimburse the plaintiff in the

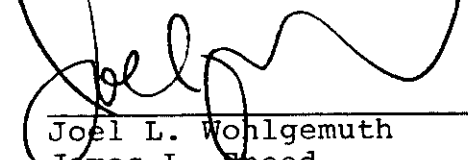
total amount of \$35,226.54 within ten (10) days of the date of the entry of this Judgment.

SO ORDERED this 25th day of January, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Ronald N. Ricketts
ATTORNEY FOR PLAINTIFF


Joel L. Wohlgemuth
James L. Sheed

ATTORNEY FOR DEFENDANTS
John Charles Smith,
Nancy Leake Sevenoaks and
John G. Leake, Trustees of
the Jeane Leake Irrevocable
Life Insurance Trust Dated
April 29, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

Case No. 89-C-460-E

JOSEPH J. BRETT, PAUL BRONSTEIN)
and GATOR CHRYSLER/PLYMOUTH)
LEASING, INC., a corporation,)

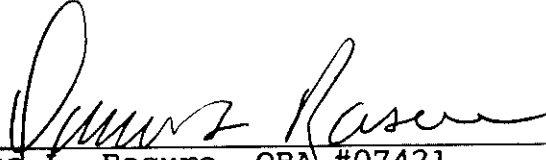
Defendants.)

STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiff, Thrifty Rent-A-Car System, Inc., by and through its counsel of record, and the defendants, Joseph J. Brett, Paul Bronstein and Gator Chrysler/Plymouth Leasing, Inc., by and through their counsel of record, stipulate to the dismissal with prejudice of all claims brought in this case by plaintiff. The parties further stipulate that they shall each bear their own attorney's fees and costs.

Dated this 26th day of January, 1990.

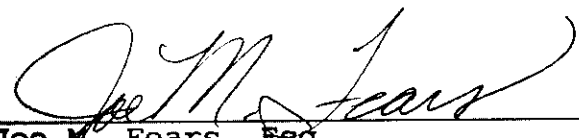
Respectfully submitted,



Dana L. Rasure, OBA #07421
Randee F. Charney, OBA #13255
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

John M. Hickey, OBA #11100
THRIFTY RENT-A-CAR SYSTEM, INC.
4608 South Garnett Road
Tulsa, Oklahoma 74146
(918) 665-9319

Attorneys for Plaintiff
Thrifty Rent-A-Car System, Inc.



Joe M. Fears, Esq.
Marsh, Shacklett & Fears P.C.
525 S. Main Street
Suite 201
Tulsa, Oklahoma 74103

Philip F. Nohrr, Esq.
Nohrr, Nohrr, Boyd, Howze
& Edwards, P.A.
100 Rialto Place, Suite 800
P. O. Box 369
Melbourne, Florida 32902-0369

Attorneys for Defendants
Joseph J. Brett, Paul Bronstein
and Gator Chrysler/Plymouth
Leasing, Inc.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

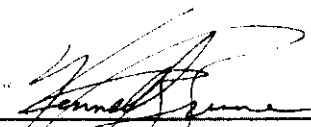
ARLINGTON INVESTMENTS)
LIMITED, formerly BARRICK)
INVESTMENTS, LIMITED,)
a Cayman Islands Corporation,)
Plaintiff,)
vs.)
MILTON D. MCKENZIE, an)
Individual,)
Defendant.)

Case No. 88-C-66-C

DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Arlington Investments Limited, and
hereby dismisses the above-styled case with prejudice.

Dated this 25th day of January, 1990.


Kenneth L. Brune, OBA #1249
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103
(918) 584-0506

ATTORNEYS FOR PLAINTIFF
ARLINGTON INVESTMENTS, LIMITED

CERTIFICATE OF MAILING

I, Kenneth L. Brune, hereby certify that on this 26th day of January, 1990, I placed in the U.S. mails at Tulsa, Oklahoma, a true and correct copy of the foregoing document with correct postage fully prepaid thereon addressed to the following:

Mr. Mike Riley
BARRICK ENERGY, INC.
24 Hazelton Avenue
Toronto, Ontario, CANADA
M5R 2E2

Jon Running, Esq.
6711 South Yale
Tulsa, Oklahoma 74135



Kenneth L. Brune

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1990

AMIN KHAN,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,
a Delaware corporation,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-172-E

JUDGMENT

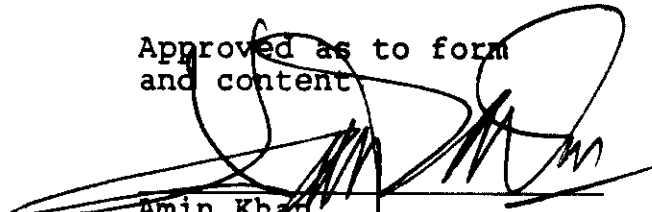
Defendant, American Airlines, Inc., having moved for Summary Judgment in its favor dismissing Plaintiff's Complaint, and said Motion having come on before the Court, and the Court thereafter on January 6, 1990, having made an Order pursuant thereto granting Defendant's Motion for Summary Judgment and directing that Judgment be entered herein in the Defendant's favor dismissing Plaintiff's Complaint with prejudice, it is hereby

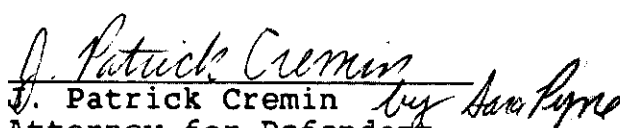
ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint be and it is hereby dismissed with prejudice, with the parties to bear their respective costs and attorney fees.

Dated: January 25, 1990.

UNITED STATES DISTRICT JUDGE

Approved as to form
and content


Amin Khan
Plaintiff, Pro Se


J. Patrick Cremin
Attorney for Defendant

4062W/CCC

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1990

MARVIN HARRELL,

Plaintiff,

vs.

No. 89-C-25-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

THOMAS AND BETTS CORPORATION,
a foreign corporation; and
THOMAS AND BETTS CORPORATION
VOLUNTARY EMPLOYEE BENEFITS
ASSOCIATION, an association,

Defendants.

JUDGMENT

In accordance with the Court's Order filed January 5, 1990, which granted summary judgment to the Defendants, Thomas and Betts Corporation and Thomas and Betts Corporation Voluntary Employee Benefits Association, the Court finds that Judgment should be, and hereby is entered in favor of the Defendants, Thomas and Betts Corporation and Thomas and Betts Corporation Voluntary Employee Benefits Association, and against the Plaintiff, Melvin Harrell.

The Court further finds that Defendants are entitled to recover their costs incurred in this matter.


IT IS SO ORDERED this 25th day of January, 1990.

S/ JAMES O. ELLISON

JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:


STEVEN R. HICKMAN
Attorney for Plaintiff


JO ANNE DEATON (#5938)
Attorney for Defendants

FILED

IN THE UNITED STATES DISTRICT COURT

JAN 26 1990

FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MICHAEL WORLAND and
MARY WORLAND,

Plaintiffs,

v.

OHIO AIR MAINTENANCE, INC., a
corporation; MID-STATES AIRCRAFT
ENGINES, INC., a corporation;
MILLER/RICHARDS AIRCRAFT SALES,
INC., a corporation; and TEXTRON
LYCOMING, a subsidiary of Textron
Inc., a corporation,

Defendants.

No. 88-C-1144-E

ORDER OF DISMISS WITH PREJUDICE

Upon Stipulation of Dismissal with Prejudice by Plaintiff and the Defendant Mid-States Aircraft Engines, Inc., the Court determines that an Order of Dismissal with Prejudice should be entered, as to the Defendant, Mid-States Aircraft Engines, Inc.

IT IS SO ORDERED that the above-styled and numbered cause be, and the same is hereby dismissed, with prejudice, as to the Defendant, Mid-States Aircraft Engines, Inc., with each party to bear their own costs.

Dated this 25th day of January, 19 90

/s/ JAMES O. ELLISON

U. S. District Judge

FILED

JAN 21 1990

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BARBARA COLLIER, d/b/a
SPEEDPRINT #13,

Defendant & Third
Party Plaintiff,

vs.

Case No. 88-C-1614-B

SPEEDPRINT SYSTEMS, INC.,

Third Party
Defendant.

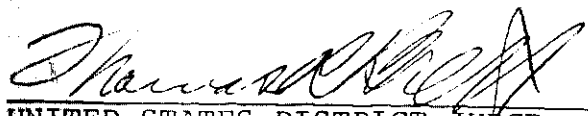
ADMINISTRATIVE CLOSING ORDER

Plaintiff

The 3rd Party/ having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 25 day of January, 1990.



UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

interd
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA JAN 25 1990

JAMES L. JAMES, CLERK
U.S. DISTRICT COURT

BIZJET INTERNATIONAL SALES &)
SUPPORT, INC., an Oklahoma)
corporation,)

Plaintiff,)

vs.)

Case No. 89-C-885-C

MULTISTATE SERVICES, INC., an)
Oregon corporation; KEITH SMITH,)
a/k/a H. KEITH SMITH; REYNA)
FINANCIAL CORPORATION, an Ohio)
corporation; JET AVIATION)
ASSOCIATES, LTD.; THE FARMERS &)
MERCHANTS NATIONAL BANK, a)
national banking corporation;)
and SOUTHCOAST BANK CORP., a)
Florida corporation,)

Defendants.)

NOTICE OF DISMISSAL

Plaintiff, Bizjet International Sales & Support, Inc. ("Bizjet"), hereby notices the dismissal of defendant Jet Aviation Associates, Ltd. ("JAA"). In support thereof, Bizjet states:

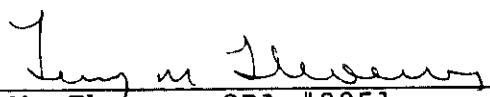
1. Bizjet commenced this action on October 20, 1989, seeking, inter alia, to foreclose its security interest in an aircraft. Included as a party to this action was JAA, a party claiming a security interest in and to the aircraft upon which Bizjet sought foreclosure.

2. Bizjet has failed to obtain service upon JAA. Defendant JAA has not submitted an answer to the Complaint nor has it appeared or otherwise responded to the Complaint.

3. Pursuant to Fed.R.Civ.P. Rule 41(a)(1), a plaintiff may notice the dismissal of a party at any time before service by the adverse party of an answer or of a motion for summary judgment. Dismissal of Bizjet's Complaint against JAA is therefore proper at this time.

WHEREFORE, plaintiff Bizjet International Sales & Support, Inc., hereby notices the dismissal of defendant Jet Aviation Associates, Ltd., from this action.

Respectfully submitted,


Terry M. Thomas, OBA #8951
R. Jay Chandler, OBA #1603
Wesley G. Casey, OBA #12602
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

Attorneys for Plaintiff,
Bizjet International Sales
& Support, Inc.

CERTIFICATE OF MAILING

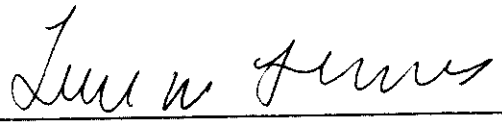
I hereby certify that on this 25th day of January, 1990, I mailed true and correct copies of the above and foregoing instrument to:

Timothy E. McCormick, Esq.
1516 South Boston, Suite 205
Tulsa, Oklahoma 74119

Daniel A. Hershman, Esq.
BOOSE CASEY CIKLIN LUBITZ
MARTENS MCBANE & O'CONNELL
Northbridge Tower, 19th Floor
Post Office Drawer 024626
West Palm Beach, Florida 33402

Jeffrey B. Lathe, Esq.
ACKERMAN, BAKST & LAUER, P.A.
Northbridge Centre - 15th Floor
515 North Flagler Drive
Post Office Drawer 3948
West Palm Beach, Florida 33402-3948

by depositing said copies in the U.S. Mail, proper postage thereon prepaid.



Terry M. Thomas

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD J. GARDNER,
a/k/a RONALD JOE GARDNER,

Defendant.

JAN 26 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-557-C

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day
of January, 1990, the Plaintiff appearing by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Catherine J. Depew, Assistant United States
Attorney, and the Defendant, Ronald J. Gardner, a/k/a Ronald Joe
Gardner, appearing not.

The Court being fully advised and having examined the
court file finds that Defendant, Ronald J. Gardner, a/k/a
Ronald Joe Gardner, was served with Summons and Complaint on
August 29, 1989. The time within which the Defendant could have
answered or otherwise moved as to the Complaint has expired and
has not been extended. The Defendant has not answered or
otherwise moved, and default has been entered by the Clerk of
this Court. Plaintiff is entitled to Judgment as a matter of
law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the Defendant,

Ronald J. Gardner, a/k/a Ronald Joe Gardner, for the principal amount of \$25,123.60, plus accrued interest of \$1,582.78 as of April 30, 1989, plus interest thereafter at the rate of 4.00 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.74 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

mmp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 25 1990

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN S. BOWLING; AUDREY KAY
TRENT; COUNTY TREASURER, Mayes
County, Oklahoma; and BOARD OF
COUNTY COMMISSIONERS, Mayes
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 89-C-717-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day
of Jan, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Mayes County, Oklahoma, and
Board of County Commissioners, Mayes County, Oklahoma, appear by
Barry Farbro, Assistant District Attorney, Mayes County,
Oklahoma; the Defendant, Kevin S. Bowling, appears by his
attorney Gary J. Dean; and the Defendant, Audrey Kay Trent,
appears not, but makes default.

The Court being fully advised and having examined the
file herein finds that Defendant, Kevin S. Bowling, acknowledged
receipt of Summons and Complaint on September 13, 1989; that the
Defendant, Audrey Kay Trent, acknowledged receipt of Summons and
Complaint on September 18, 1989; and that the Defendant, Board of
County Commissioners, Mayes County, Oklahoma, acknowledged
receipt of Summons and Complaint on September 6, 1989.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer and Cross-Petition on October 3, 1989; and that the Defendant, Audrey Kay Trent, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of land located in the North Half of the Northwest Quarter (N/2 NW/4) of Section Twenty-four (24), Township Twenty (20) North, Range Twenty (20) East of the Indian Base and Meridian, Mayes County, State of Oklahoma, being more particularly described as follows, to-wit: Beginning at a point 15.15 feet West and 400 feet South of the Northeast corner of the NW/4 of the NW/4 of said Section 24; thence South 351 feet to a point on the Northerly right-of-way of Hwy. No. 33, thence N 55° 27' E along said right-of-way a distance of 322.7 feet; thence N 29° 41' W a distance of 193.3 feet; thence West a distance of 170.15 feet to the point of beginning, subject to a driveway easement along the East 25 feet thereof.

The Court further finds that on January 25, 1988, the Defendants, Kevin S. Bowling and Audrey Kay Trent, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$31,000.00, payable in monthly installments, with interest thereon at the rate of 10.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Kevin S. Bowling and Audrey Kay Trent, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated January 25, 1988, covering the above-described property. Said mortgage was recorded on January 27, 1988, in Book 683, Page 273, in the records of Mayes County, Oklahoma.

The Court further finds that the Defendants, Kevin S. Bowling and Audrey Kay Trent, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Kevin S. Bowling and Audrey Kay Trent, are indebted to the Plaintiff in the principal sum of \$30,962.71, plus interest at the rate of 10.5 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Kevin S. Bowling and Audrey Kay Trent, in the principal sum of \$30,962.71, plus interest at the rate of 10.5 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the current

legal rate of 7.74 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Kevin S. Bowling and Audrey Kay Trent, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/H. DALE COOK

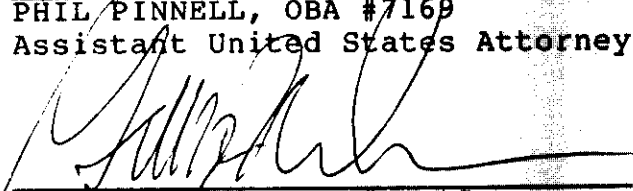
UNITED STATES DISTRICT JUDGE

APPROVED:

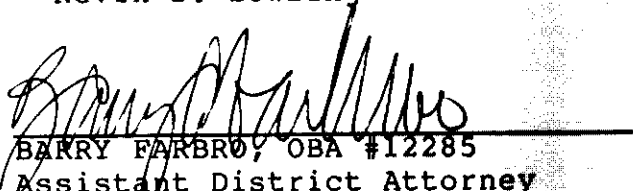
TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



GARY J. DEAN, OBA #2248
Attorney for Defendant,
Kevin S. Bowling



BARRY FARBRØ, OBA #12285
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma

FILED

JUL 26 1980

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CLIFTON ASHER and KELLY ASHER,)
)
Plaintiffs,)
)
vs.)
)
JIM BARTLETT d/b/a McDONALD TRUCK)
CENTER,)
)
Defendant and Third)
Party Plaintiff,)
)
vs.)
)
ROY E. GREEN d/b/a GREEN'S MACHINE)
& SUPPLY,)
)
Third-Party Defendant.)

No. 88-C-1262-B

ORDER

This matter comes before the Court upon Third-Party Defendant Roy Green's ("Green") Motion to Dismiss for lack of *in personam* jurisdiction pursuant to Fed.R.Civ.P. 12 (b)(1). Green asserts he lacks the necessary minimum contacts with the State of Oklahoma for this Court to exercise *in personam* jurisdiction. Third-Party Plaintiff Bartlett ("Bartlett") argues that Green is an indispensable party to this litigation and should not be dismissed. Alternatively, Bartlett argues the entire case should be dismissed if the Court concludes it does not have jurisdiction over Green.

The relevant facts are as follows: Plaintiff Asher took his truck to Defendant/Third-Party Plaintiff Bartlett for repairs. Bartlett, in turn, removed the engine and subcontracted the work to Third-Party Defendant Green. Plaintiff Asher initiated this

action against Bartlett after he experienced difficulties with the truck and became dissatisfied with the work he thought Bartlett had performed.¹ Bartlett subsequently filed a Third-Party Complaint against Green seeking indemnity for any liability he may incur because Green performed the actual repair work.² All of the work Green performed on Bartlett's behalf was done in Texas. Further, Green does not operate in Oklahoma, nor does he solicit business in Oklahoma.

The question of *in personam* jurisdiction is governed by the law of the forum state. Yarbrough v. Elmer Bunker & Assoc., 669 F.2d 614 (10th Cir. 1982). Oklahoma law allows a court to exercise jurisdiction over nonresidents on any basis consistent with the state and federal Constitutions. Vacu-Maid, Inc. v. Covington, 530 P.2d 137, 141 (Okla.App. 1974). As such, Green's contacts with the forum state must be such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); First City Bank v. Air Capitol Aircraft Sales, 820 F.2d 1127, 1130-31 (10th Cir. 1987).

"[I]t is essential in each case that there be some act by which the defendant purposefully

¹The Court has determined by previous Order that it can exercise *in personam* jurisdiction over Defendant Bartlett because Defendant admitted jurisdiction.

²Bartlett filed its Third-Party Complaint, pursuant to Fed.R.Civ.P. 19(a), seeking indemnity from Green. Bartlett's Third-Party Complaint is more in the nature of a Rule 14 Impleader action. The basis upon which Green became a party is not significant in light of the Court's ruling herein.

avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

Hanson v. Denckla, 357 U.S. 235 (1958). Further, factual disputes as to Green's minimum contacts are resolved in Bartlett's favor, and Bartlett's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party. Behagen v. Amateur Basketball Assn., 744 F.2d 731, 733 (10th Cir. 1984), *cert. denied*, 471 U.S. 1010 (1985); American Land Program, Inc. v. Bonaventura Uitgevers Maatschappij, N.V., 710 F.2d 1449, 1454 n.2 (10th Cir. 1983).

In this instance, there is no evidence that Green purposefully availed himself to conduct activities within the state of Oklahoma. Green does not do business in Oklahoma and does not solicit business in Oklahoma. The only contact Green has with Oklahoma is by working as a subcontractor/agent for an entity chosen to repair an engine belonging to an Oklahoma resident. Based upon these facts the Court concludes Third-Party Defendant Green does not have sufficient minimum contacts with Oklahoma to warrant exercising *in personam* jurisdiction.

Bartlett argues, however, that Green is a necessary and indispensable party under Fed.R.Civ.P. 19 and that the action should be dismissed if the Court concludes it does not have jurisdiction over Green. "Indispensable parties are those without whom the action cannot proceed, and must be joined even if by such

joinder the court loses jurisdiction over the controversy."
Milligan v. Anderson, 522 F.2d 1202, 1204 (10th Cir. 1975).

"An indispensable party is one who has such an interest in the subject matter of the controversy that a final decree cannot be rendered as between other claimants, of interest in the subject matter, who are parties to the action, without radically and injuriously affecting his interest and without leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience."

Id. at 1204, *quoting* Skelly Oil Co. v. Wickham, 202 F.2d 442 (10th Cir. 1953). There is no suggestion the Court will not be able to grant full relief to the Plaintiff, if it prevails, on the charges made against Defendant Bartlett for its alleged wrongful conduct. Certainly, it would be more expeditious to litigate the underlying claim and the indemnity claim in one proceeding; however, a Court's inability to exercise jurisdiction over the Third-Party Defendant should not preclude the underlying claim from being litigated where jurisdiction over the Defendant has been established and full relief can be accorded Plaintiff. Any threat of inconsistent judgments or duplicitous litigation is the result of Defendant Bartlett admitting jurisdiction before this Court. Defendant cannot now stand to complain that it will have to determine the indemnity issue in separate litigation.

Based upon these facts, the Court concludes that it does not have *in personam* jurisdiction over Third-Party Defendant Green; Green is not an indispensable party; and Defendant Bartlett will not be prejudiced by having to litigate the indemnity issue in another

forum. Therefore, it is ORDERED that Third-Party Defendant Green's Motion to Dismiss be SUSTAINED and the Third-Party Complaint be dismissed. It is FURTHER ORDERED that the parties abide by the following schedule:

February 8, 1990

EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (UNNECESSARY IF WITNESS' DEPOSITION TAKEN);

March 2, 1990

COMPLETE ALL DISCOVERY;

March 16, 1990

DEADLINE FOR FILING DISPOSITIVE MOTIONS;

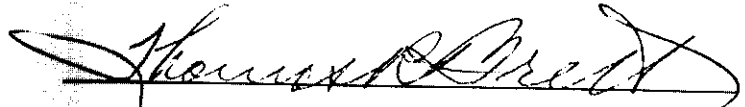
April 2, 1990

RESPONSES TO DISPOSITIVE MOTIONS DUE;

April 13, 1990

PRE-TRIAL CONFERENCE AND HEARING ON PENDING MOTIONS AT 9:00 a.m.

IT IS SO ORDERED, this 25th day of January, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 25 1990

JOHN REIDEL, et al.,

Plaintiffs,

vs.

SAMUEL K. SKINNER, et al.,

Defendants.

JOHN S. SILVER, CLERK
U.S. DISTRICT COURT

No. 89-C-0660-B

O R D E R

This matter comes on for consideration upon the Motions to Dismiss filed by all present Defendants¹ herein except federal Defendants Samuel K. Skinner (Secretary of the United States Department of Transportation, Thomas D. Larson, (Administrator of Federal Highway Administration, and Wayne McCollam (Division Administrator of Oklahoma City, Oklahoma Office of Federal Highway Administration). In that the reasons supporting the Motions to Dismiss vary somewhat among the Defendants, the Court will consider the motions separately as to each defendant or defendant group.

EPA ADMINISTRATORS' MOTION TO DISMISS

The Environmental Protection Agency (EPA) Defendants, William R. Reilly, the Agency's Administrator, and Robert E. Layton, Jr., its Regional Administrator, have moved to dismiss this action as to them on the ground that none of Plaintiffs' claims state a claim

¹Former federal Defendants Manuel Lujan, Jr. (Secretary of the United States Department of the Interior) and John Turner (Director-Designate of United States Fish and Wildlife Service) filed a joint Motion to Dismiss, confessed by the Plaintiff, and granted by the Court by its Order of January 3, 1990.

against EPA (Reilly and Layton being only nominal Defendants - the gravamen of the action is against EPA).

Of Plaintiffs' nine claims only No. 5 bears viability scrutiny. Claims 1 and 7 are not directed at Reilly, Layton or the EPA. Claims 2, 3, 4, 6, 8 and 9 aver that federal laws require, in certain instances, federal agencies to prepare Environmental Impact Statements before projects are funded, authorized or permitted. These claims fail to state that EPA or the nominal Defendants have funded, authorized or issued permits for the project(s) under scrutiny (particularly in connection with the narrow categories, endangered species consultations and conformance with approved State Implementation Plan). These latter categories are the only way claims 2, 3, 4, 6, 8 and 9 would implicate EPA or its nominal Defendants. Accordingly, these claims state no claim against the EPA Defendants Reilly and Layton (or EPA).

Claim 5 relates to 404 permits.² Plaintiffs have charged the EPA Defendants have not required the Oklahoma Turnpike Authority (OTA) to apply in a timely manner for 404 permits even though EPA is aware such permits are needed. Plaintiffs allege the Clean Water Act authorizes EPA to take enforcement action against unauthorized discharges of dredged or fill material. No unauthorized discharge has been alleged in the project being opposed. Before EPA may act under the Clean Water Act, an

²Section 404(b), Clean Water Act, 33 U.S.C. §1344.

unpermitted discharge must occur. Natural Resources Defense Council v. U.S.E.P.A., 822 F.2d 104 (D.C.Cir. 1987).

The Court concludes the Motion to Dismiss of the EPA Defendants Reilly and Layton should be and the same is hereby SUSTAINED.

CITY OF TULSA'S MOTION TO DISMISS

The City of Tulsa (City) moves to dismiss the Complaint as to it on two grounds: (1) lack of subject matter jurisdiction, and (2) failure to state a claim upon which relief can be granted.

The City argues state statutes take precedence over local city ordinances in the event of conflict; that OTA, being a creature of state statute, is a superior sovereign to the City of Tulsa; that the Oklahoma legislature has pre-empted local city ordinances in the area of turnpike construction. The Court agrees. Application of Oklahoma Turnpike Authority, 348 P.2d 510 (Okla. 1960).

Plaintiffs seek to require OTA to submit itself to the City's jurisdiction by having to obtain a city flood plain development permit. Plaintiffs seek to require the city to enforce its flood control ordinance against OTA. This is a dressed-up version of "Lets you and him fight."

Though not urged by the City, the Court concludes a serious question exists as to the standing of these Plaintiffs to challenge the City's enforcement (or lack of it) of the City's flood control ordinance. In its Brief in Support of its Motion to Dismiss the City states the issue presented this Court by Plaintiffs' seventh claim is whether the City can require OTA to submit to the City's

ordinances involving the design and construction of the South Tulsa Bypass with regard to flood control. The better question, perhaps, is can the Plaintiffs require the City to require the OTA to submit to the City's flood control ordinances in relation to the proposed turnpike.

At its strongest, Plaintiffs' seventh claim is a pendent state claim, the treatment of which lies within the Court's sound discretion. United Mine Workers v. Gibbs, 383 U.S. 715 (1966). In view of the City's stated intent to cooperate with OTA, which cooperation will presumably be in compliance with all applicable laws and ordinances, the Court believes the interests of justice will be better served by exercising its discretion in favor of the City's Motion to Dismiss. Accordingly, such motion should be and the same is hereby SUSTAINED.

CORPS OF ENGINEERS DEFENDANTS' MOTION TO DISMISS

This motion is filed on behalf of federal Defendants Richard B. Cheney, Secretary of Defense, John O. Marsh, Jr., Secretary of the Army, and Robert W. Page, Assistant Secretary of the Army. The Corps of Engineers is under the jurisdiction and executive direction of Defendants Cheney, Marsh and Page.

These Defendants urge lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. The gravamen of both positions is that this action, as it presently stands, regarding these Defendants, is premature.

Plaintiffs allege the turnpike construction proposed by OTA would require a "404 permit"³ from the Corps of Engineers. Applications for such permits are to be directed to the Tulsa District Engineer⁴ by virtue of 33 C.F.R. 325.1 *et seq.*, who has not been named as a party to this action.

No application for a permit was on file with the Tulsa District Corps of Engineer as of the filing of this action. An application for permit was tendered to the Tulsa District Engineer in November 1989 but returned as incomplete.⁵

Whether a permit application is not on file or, if filed, incomplete, is, the Court concludes, not presently material to the issue of ripeness. This is because there has been no indication, through the pleadings and statements of the parties, that a 404 permit application will not be made. Had such an intent not to apply been manifested, the matter would become ripe. River v. Richmond Metropolitan Authority, 359 F.Supp. 611 (E.D.Va. 1973).

Plaintiffs rely heavily upon Maryland Conservation Council,

³Section 404(b), Clean Water Act, 33 U.S.C. § 1344.

⁴Presently, Colonel F.L. Smith, Jr.

⁵See 33 C.F.R. 325.2. The overall application is comprised of three separate applications, relating to various segments of the total project. OTA Defendant Kilpatrick states to the Court, in his Reply Brief, that the applications are now complete and under consideration by the Corps of Engineers. This statement stands undenied.

Inc. v. Gilchrist, 808 F.2d 1039 (4th Cir. 1986). In Gilchrist, a citizens group sought to enjoin Montgomery County, Maryland officials from building, with a substantial grant of federal funds, a highway through Seneca Creek State Park. Plaintiffs in Gilchrist alleged violation of four acts: National Environmental Protection Act (NEPA); Federal Water Pollution Control Act (Clean Water Act); Land and Water Conservation Fund Act (the Conservation Act); and the Department of Transportation Act (The Transportation Act). The District Court dismissed Plaintiffs' three claims and Plaintiffs appealed.

The Fourth Circuit reversed as to NEPA (which implicated the Clean Water Act because of a 404 permit need) but affirmed as to the Transportation and Conservation Acts as not yet ripe. The predicate upon which the reversal hinged was the highway was a major federal action because "of the inevitability of the need for at least one federal approval." *Ibid.* at 1042. A distinction between Gilchrist and the present matter is that construction of the highway in Gilchrist (but not through the Seneca State Park) had begun.

In Oklahoma Wildlife Federation v. United States Corps of Engineers, et al., Civ. No. 87-C-237-B, D.C. N.D. Okla.), this Court held, in its Findings of Fact and Conclusions of Law, that the Council on Environmental Quality (CEQ), established by NEPA, promulgated regulations which allow federal agencies to make a preliminary Environmental Assessment (EA) to determine whether the

environmental effects of a proposed action are significant. From this either an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI) results.

This Court further held, in Oklahoma Wildlife, that under the Corps of Engineers 404 permit program, the District Engineer is required by federal regulations⁶ to comply with NEPA.⁷

All of this is implicit in the applications for permits, refiled in completed form, pending before the Corps of Engineers. The very action Plaintiffs sought to force, i.e., a 404 permit review which will implicate NEPA, is in the process of being done. The Court concludes it has nothing to review as the Corps of Engineers process is not yet complete; thus the action, as to the Corps of Engineers is premature. Accordingly, the Motion to Dismiss of the Corps of Engineers Defendants, Cheney, Marsh and Page, should be and the same is hereby SUSTAINED.⁸

ODOT DEFENDANT NEAL A. McCaleb's Motion to Dismiss

Neal A. McCaleb, in his official capacity as Director of the Oklahoma Department of Transportation (ODOT), moves to dismiss the

⁶33 C.F.R. §325.2 and 33 C.F.R. Part 230.

⁷Appendix B to Part 230 specifically mandates procedures for implementing NEPA and CEQ regulations (40 C.F.R. Parts 1500 through 1508) regarding the Corps' permit program.

⁸The Court recognizes that partial summary judgment may be appropriate; however, the net result would, it seems, be the same. A partial summary judgment holding the matter is not ripe would not preclude a later action if and when ripeness occurs.

Plaintiffs' Complaint on three grounds:

1. This action as to ODOT and its project, the Mingo Valley Expressway (U. S. 169), is barred by *res judicata* and collateral estoppel because of this Court's prior decision in Reidel v. Dole, No. 86-C-47-B (Northern District of Oklahoma);
2. This action as to ODOT is barred by the doctrine of laches as to the adequacy of the Mingo Valley Expressway Final Environmental Impact Statement (FEIS); and
3. This action as to ODOT and its project Mingo Valley Expressway is barred by both the federal statute of limitations (28 U.S.C. § 2401(a)) and the state statute of limitations (12 O.S. (1981) § 95).

As the ODOT Defendant acknowledges in his brief, 28 U.S.C. § 2401(a) applies to civil actions commenced against the United States. This section seemingly would have no application to Plaintiffs' action against ODOT's Director (an individual in charge of a State of Oklahoma agency). Notwithstanding the issue of application of 28 U.S.C. § 2401(a), the time period therein, six years within which to commence an action, has expired since the FEIS was issued⁹ more than six years prior to the filing of the instant case.

12 O.S. § 95, as applicable to Plaintiffs' claims, would operate as a bar to the instant action against the ODOT Defendant. The longest period available under §95¹⁰ is five years. Any action

⁹Although Plaintiffs' Complaint refers to the Mingo Valley Expressway FEIS as "the 1982 Mingo FEIS" Odot's Defendant states the final action was taken in March, 1983.

¹⁰Other than a fraud cause of action which runs for two years from the date of discovery of the fraud.

attacking the Mingo Valley Expressway FEIS would be time barred.

The Court concludes the applicability *vel non* of the federal and state statutes of limitation to the Plaintiffs' ODOT claim would be limited to the Mingo Valley Expressway (MVE) as originally planned, designed and constructed. If the MVE is substantially the same, including the south connecting end to U. S. 64, then not only would the Plaintiffs' ODOT claims be time barred, they would also be precluded by *res judicata*.

This Court's earlier decision in Reidel 1¹¹ found the MVE and the then-proposed Creek Expressway, "though contemplated in an overall plan for the Tulsa transportation system, each have independent utility."¹² MVE not only had independent utility but "logical termini."¹³

However, Plaintiffs allege the southern portion of the MVE has been altered to conform to OTA's Tulsa South Bypass Alignment. Thus, the issue of a supplemental EIS (or EA to determine whether an EIS or FONSI) is potentially extant though probably premature.

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which

¹¹Reidel v. Dole, No. 86-C-47-B (Northern District of Oklahoma).

¹²Order entered June 30, 1987, Reidel I, fifth unnumbered page.

¹³Order referenced in footnote 4, fourth unnumbered page.

would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to dismiss under Rule 12(b), Fed.R.Civ.P. admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

The additional grounds to support the ODOT Defendant's Motion to Dismiss, collateral estoppel and laches, are subsumed by the Plaintiffs' allegations that the MVE has been altered to conform to OTA's Tulsa South Bypass Alignment. When and if Plaintiffs' issue as to MVE alteration becomes judicially ripe, Plaintiffs will not be estopped since dealing with a new alignment of the MVE. Likewise, laches would be inappropriate to this relatively recent (if factual) re-alignment of the south end of the MVE.

The Court concludes the ODOT Defendant's Motion to Dismiss should be and the same is hereby DENIED.

OTA DEFENDANT, JOHN KILPATRICK'S, MOTION TO DISMISS

The Defendant John Kilpatrick, in his official capacity as Chairman of the Oklahoma Turnpike Authority (OTA), moves to dismiss Plaintiffs' second, third, fourth, fifth, eighth and ninth claims¹⁴

¹⁴The remaining claims, 1, 6 and 7 are not included in the motion.

for relief (as to OTA - Kilpatrick)¹⁵ on the ground these claims are not ripe for judicial review since no federal agency has taken any final agency action. This motion essentially adopts the motions and briefs submitted on behalf of the EPA Defendants and the Corps of Engineers Defendants.

The Court concludes the same reasoning applies to the OTA Defendants as the EPA Defendants and the Corps of Engineers Defendants. The Court adopts its same conclusions and orders that the OTA Defendant's Motion to Dismiss as to claims 2, 3, 4, 5, 8 and 9, should be and the same is hereby SUSTAINED.

Plaintiffs' claim No. 7 (requiring OTA to obtain a flood plain development permit) is a pendent state claim dismissed within the Court's discretion upon the City of Tulsa's Motion to Dismiss.¹⁶

IT IS SO ORDERED this 25th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹⁵Although John Kilpatrick is the nominal Defendant, the relief sought relates to OTA.

¹⁶Authorities cited in earlier section of order dealing with City of Tulsa's Motion to Dismiss.

IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**
NORTHERN DISTRICT OF OKLAHOMA

JAN 25 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES,

Plaintiff,

vs.

MOSE STEPHENS, JR.,

Defendant.

No. 86-CR-112-C

88-C-512-C

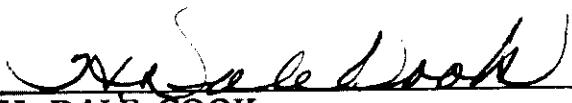
ORDER

Judgment as to Count III for violation of 21 U.S.C. §848 has been affirmed by the Tenth Circuit Court of Appeals and defendant has exhausted his appeal process as to his conviction under Count III.

The Court therefore, vacates and dismisses the sentence imposed as to Count I for violation of 21 U.S.C. §846, Conspiracy to Possess with Intent to Distribute, as a lesser included offense.

This Order hereby satisfies defendant's pending request pursuant to 28 U.S.C. §2255 and the Order and Judgment issued by the Tenth Circuit Court of Appeals (Case No. 88-2610, January 16, 1990).

IT IS SO ORDERED this 25 day of January, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

2/308

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 25 1990

JOHN REIDEL, et al.,

Plaintiffs,

vs.

SAMUEL K. SKINNER, et al.,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 89-C-0660-B

O R D E R

This matter comes on for consideration upon the motion of 25¹ of the individual Plaintiffs to Dismiss their claim(s) without prejudice. John Kilpatrick, the Oklahoma Turnpike Authority defendant, objects,² seeking sanctions and summary judgment based, primarily, on these moving Plaintiffs' failure to respond to Request for Admissions. Kilpatrick has not filed a motion for summary judgment nor has he supported the request, made by him in his objection, with a supporting brief enumerating material undisputed facts upon which summary judgment might be predicated. Local Rule 15(b), Rules of the United States District Court for the Northern District of Oklahoma. Additionally, the Request for

¹John Reidel, Rose Mary Ham, Robert I. Smith, Mike Wicker, Linda Wicker, John Klenda, Carolyn Klenda, Max Crim, Roger Bowen, Sally Bowen, Dan Holt, William R. Ricks, Marinee G. Ricks, Rhonda D. Holt, Terence L. Beach, Ralph Burton, Sally Burton, J. L. Clifton, Linda C. Beach, James Roach, Marilyn Roach, Frank Maxwell, Jerry Puckett, Donna Puckett, and Cindy Hale.

²Kilpatrick is the only Defendant who filed written objections to this motion. The motion itself recites that "Norman Hill states that he has an objection on behalf of the Oklahoma Department of Transportation to the Application to Dismiss, insofar as it calls for removal of John Reidel as a Plaintiff."

Admissions, which Kilpatrick urges are deemed admitted by Fed.R.Civ.P. 36, are not before the Court at present and cannot serve as an uncontroverted factual predicate upon which to grant summary judgment. Therefore, Oklahoma Turnpike Authority Defendant Kilpatrick's Motion for Summary Judgment should be and the same is hereby DENIED.

The Court concludes that the Motion to Dismiss claim(s) of the following listed Plaintiffs: John Reidel, Rose Mary Ham, Robert I. Smith, Mike Wicker, Linda Wicker, John Klenda, Carolyn Klenda, Max Crim, Roger Bowen, Sally Bowen, Dan Holt, William R. Ricks, Marinee G. Ricks, Rhonda D. Holt, Terence L. Beach, Ralph Burton, Sally Burton, J. L. Clifton, Linda C. Beach, James Roach, Marilyn Roach, Frank Maxwell, Jerry Puckett, Donna Puckett, and Cindy Hale, should be and the same is hereby GRANTED, without prejudice. Defendant Kilpatrick's objections thereto are hereby DENIED.

IT IS SO ORDERED this 25th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COY WHITE,

Plaintiff,

v.

THEODORE R. WHITTENBERG,
an individual, and WERNER
ENTERPRISES, INC., a
Nebraska corporation,


Defendants.

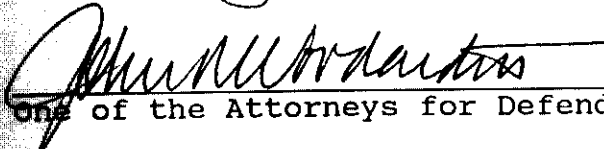
87
No. 88-C-570-E ✓

FILED
U.S. DISTRICT COURT

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) F.R.C.P., the Plaintiff, Coy White, and the Defendants, hereby stipulate to the Dismissal of the above styled and numbered cause of action against the Defendants with prejudice to the refiling of same.


One of the Attorneys for Plaintiff


One of the Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COY WHITE,

Plaintiff,

v.

THEODORE R. WHITTENBERG,
an individual, and WERNER
ENTERPRISES, INC., a
Nebraska corporation,

Defendants.

89.
No. 88-C-570-E ✓


JAN 24 1990
C. SHAWEN CLERK
DISTRICT COURT


JAN 24 1990

John C. Silver, Clerk
DISTRICT COURT

STIPULATION OF DISMISSAL OF
PROPERTY DAMAGE CLAIMS WITH PREJUDICE

Pursuant to Rule 41 Federal Rules of Civil Procedure, the Plaintiff and Defendant stipulate to the dismissal of the Plaintiff's claims for property damage, with prejudice.


One of the Attorneys for Plaintiff


One of the Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 24 1980

Jack C. Silver, Clerk
U.S. DISTRICT COURT

PROFESSIONAL INVESTORS LIFE
INSURANCE COMPANY, an Oklahoma
corporation,

Plaintiff,

vs.


Case No. 88-C-158-B

BROADCAST CAPITAL CORP., a
Delaware corporation; SAN DIEGO
SECURITIES, INC., a California
corporation; THOMAS GREEN AND
ASSOCIATES, INC., a California
corporation; and JOHN LUCAS,

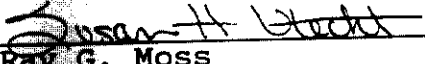
Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff, Professional Investors Life Insurance Company, and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, stipulates to this dismissal with prejudice of the above captioned action in its entirety as to Defendants Broadcast Capital Corp., San Diego Securities, Inc., Thomas Green and Associates, Inc. and John Lucas.


David L. Crutchfield
418 E. 2nd Street
Edmond, Oklahoma 73034

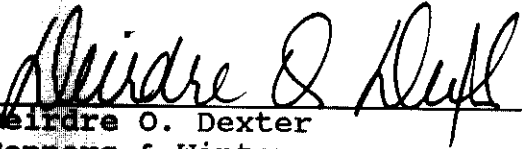
Attorney for Plaintiff,
Professional Investors Life Insurance
Company


Ray G. Moss
Susan H. Utecht

DAUGHERTY, BRADFORD, FOWLER & MOSS
A Professional Corporation
900 City Place
204 North Robinson

Oklahoma City, Oklahoma 73102
(405) 232-0003

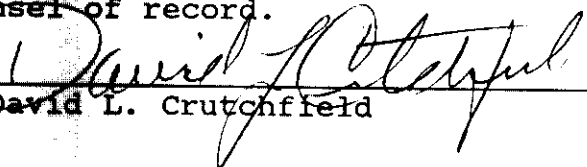
Attorneys for Defendants, San Diego
Securities, Thomas Green and Associates,
and John Lucas


Deirdre O. Dexter
Connors & Winters
2400 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Broadcort Capital Corp.

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the
above and foregoing instrument was mailed this 24th day of
January, 1990, to all counsel of record.


David L. Crutchfield

SU\SDS.DWP

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 24 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SHARI GOODWIN,
Plaintiff,

v.

No. 88-C-1586-B

JOHN BAILEY and DIANNA BAILEY,
individually and JKB, INC.,
an Oklahoma corporation, d/b/a
ELECTRONIC SERVICES OF TULSA,

Defendants.

STIPULATION OF DISMISSAL

COME NOW the parties and stipulate to the dismissal of the above-entitled cause with prejudice to any further action.

FRASIER & FRASIER

By: 

Steven R. Hickman OBA#4128
P.O. Box 799
Tulsa, OK 74101
918/584-4724

MCCORMICK, ANDREW & CLARK

By: 

D. Kevin Ikenberry, OBA #10354
111 E. First St.
Tulsa, OK 74103
918/583-1111

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 21 1990

MARK ANTHONY THORNTON,

Plaintiff,

vs.

DREW DIAMOND, MEDICAL RECORDS
DEPARTMENT, OKLAHOMA OSTEOPATHIC
HOSPITAL,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-531-B

ORDER

Currently before the Court is the Magistrate's Report and Recommendation that this case be dismissed pursuant to 28 U.S.C. §1915(d) as obviously being without merit. Plaintiff has sought three extensions of time in which to file his Objection to the Report and Recommendation; however, no extensions were ever granted. The Court has conducted an independent review of the pleadings and concludes that Plaintiff could not make a rational argument on the law or the facts to support his claim. Therefore, the Court hereby AFFIRMS the Magistrate's Recommendation to Dismiss the Action. The Court, however, DENIES the Magistrate's Recommendation that sanctions be imposed against Plaintiff because such would inhibit a prisoner's free access to the courts.

IT IS SO ORDERED, this 24th day of January, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

REFILED

JUN 20 1989

V.

89-C-531-B

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Magistrate finds that the instant action should be dismissed as obviously without merit for the following reasons.

The prisoner Plaintiff names as Defendants, City of Tulsa Police Chief Drew Diamond and the "head personnel or employee of the Medical Records Department of Oklahoma Osteopathic Hospital". Plaintiff seeks all records held by each Defendant pertaining to Plaintiff or Tulsa county District Court Cases numbered CRF084-4085, CRF 84-4879, and CRF 86-4293. As the basis for the relief

he seeks, Plaintiff relies on the F.O.I.A. and 28 U.S.C. §534 (which requires the United States Attorney General to maintain central criminal files).

Plaintiff utterly fails to set forth the relevance of these federal statutes to his claim, nor, in fact, do they have any relevance. Title 28 U.S.C. §534 does not grant a citizen any type of right to records held by a state or municipality. Likewise, the F.O.I.A. applies only to federal agencies, as is spelled out in 5 U.S.C. §552(f).

Plaintiff nowhere alleges that Defendants are federal custodians of the records Plaintiff seeks, nor could Plaintiff reasonably do so. Plaintiff nowhere alleges he even made a F.O.I.A. request, or that it was denied. Simply put, Plaintiff baldly asks this Court to order employees of non-federal governmental units to turnover a broad group of police and medical records on the basis of two totally inapplicable federal statutes.

Plaintiff's action is patently frivolous and should be dismissed. Furthermore, it appears that in bringing this action, Plaintiff has violated Rule 11's requirement to certify "that to the best of the signor's knowledge, information, and belief formed after reasonable inquiry [the suit] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law ..." Rule 11 Fed.R.Civ.P. In this case, a reasonable inquiry, including a simple reading of the two statutes, relied on by

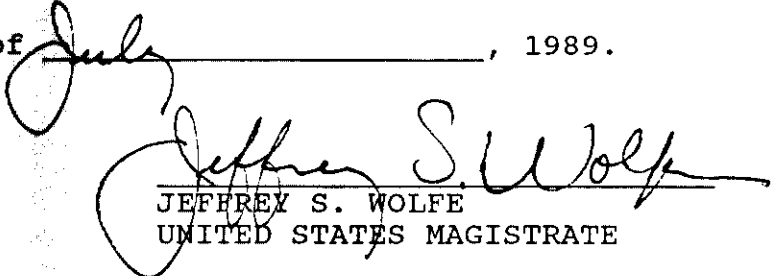
Plaintiff, would have disclosed their inapplicability to Plaintiff's case. Furthermore, Plaintiff makes no argument for extending existing law to affect non-federal governmental employees, nor, does Plaintiff ground his suit on any facts.

The best that can be said for the suit is that it was brought carelessly. But whether due to carelessness or by design to harass, Plaintiff has violated Rule 11's duties.

Therefore, it is the further recommendation of the Magistrate that the Court impose an appropriate sanction of \$50.00 upon the signor of the complaint, Mark Anthony Thornton, to be paid to the Court through the United States Court Clerk. Plaintiff's action should be dismissed and, for violation of Rule 11, he should be sanctioned the sum of \$50.00.

Pursuant to Local Rule 32(D), parties are given ten (10) days from the above filing date to file any objections with supporting brief.

Dated this 20th day of July, 1989.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

) CIVIL ACTION NO. 89-C-554-B

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Douglas E. Chaney, a/k/a Douglas Eugene Chaney, for the principal amount of \$8,286.14, plus accrued interest of \$1,137.05 as of February 28, 1989, plus interest thereafter at the rate of 4.00 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.74 percent per annum until paid, plus costs of this action.

s/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

mmp

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SCOTT L. MONROE,

Plaintiff,

vs.

Case No. 89-C-679-E

JON BAILEY AND DIANNA BAILEY,
Individually; JKB, INC., d/b/a
ELECTRONIC SERVICES OF TULSA,

Defendants.

STIPULATION OF DISMISSAL

COME NOW the parties and stipulate to the dismissal of the
above entitled cause with prejudice to any further action.

FRASIER & FRASIER
Attorneys for Plaintiff
SCOTT MONROE
P. O. Box 799
Tulsa, Oklahoma 74101
(918) 584-4724

By: 

Steven R. Hickman, OBA #4128

MCCORMICK, ANDREW & CLARK
A Professional Corporation
Attorneys for Defendants
JON BAILEY AND DIANNA BAILEY
JKB, INC., d/b/a ELECTRONIC
SERVICES OF TULSA
Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

By: 


D. Kevin Ikenberry, OBA #10354

Entered

Jack C. Silver, Clerk
U.S. DISTRICT COURT

It is, therefore, Ordered that **default judgment** is entered against the Defendant Donald White, for failure to attend the **status and scheduling** conference December 15, 1989; and, that an evidentiary hearing be held to **determine the** amount of the judgment to be entered. Plaintiff is to file his Application to set Evidentiary Hearing, on or before Feb 9, 1990 as to the matter of damages.

Dated this 24th day of January, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 23 1990

IN RE:

ASBESTOS LITIGATION

M-1417
ASB-TW- 2846 DISTRICT COURT

DENNIS LLOYD EARP and PEGGY
EARP, Plaintiff's Spouse,

Plaintiffs,

vs.

No. 88-C-704-B ✓

ANCHOR PACKING COMPANY, et al.,

Defendants.

O R D E R

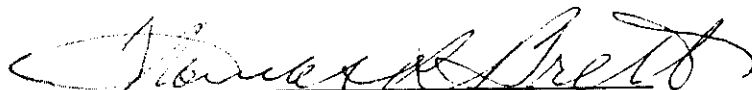
This matter comes before the Court on the 23rd day of January, 1990, and after considering comments and agreements of the parties, the above-referenced causes of action are hereby dismissed upon the following conditions:

The dismissal, as to the remaining Defendants, The Celotex Corporation, Eagle-Picher Industries, Inc., Milwhite, Inc., and Owens-Corning Fiberglas Corporation, is with prejudice regarding any and all diseases or conditions (including but not limited to asbestosis), excepting only carcinogenic or malignant (cancerous) diseases caused by exposure to asbestos and any cause of action Plaintiffs may have under Oklahoma law for increased risk or fear of cancer.¹

¹As of this date the record reveals the Plaintiff, Dennis Lloyd Earp, cannot establish by reasonable medical probability that he presently has a carcinogenic (cancer) disease or in the future will have such disease caused by exposure to asbestos. (If Plaintiff, Dennis Lloyd Earp, timely proceeds with an alleged cause of action for "fear of cancer" or "increased risk of cancer" such will be in the Oklahoma state courts to determine if such a cause of action

The parties are to pay their own respective costs and attorneys' fees.

IT IS SO ORDERED this 23rd day of January, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

is recognized therein. At least one Defendant (Milwhite), agreed there would be no removal to the federal court if said state court action was limited as aforesaid to the increased risk and/or fear of cancer alleged cause of action.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 22 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ROBERT HOWARD,

Plaintiff,

vs.


Case No. 89-C-098-B


CREEK COUNTY, OKLAHOMA,
ex rel CREEK COUNTY
EMERGENCY AMBULANCE
SERVICE DISTRICT, et al.,

Defendants.

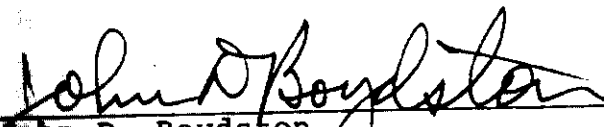
STIPULATION OF DISMISSAL WITH PREJUDICE

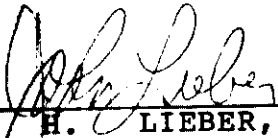
All parties to this action hereby stipulate that any and all causes of action, claims and cross-claims are hereby dismissed with prejudice.


Robert Howard, Plaintiff


Tamsy R. Sandford
Attorney for Plaintiff


Allen Mitchell


John D. Boydston
Attorney for Defendant,
Allen Mitchell


JOHN H. LIEBER, ATTORNEY FOR
DEFENDANTS, CREEK COUNTY EMERGENCY
AMBULANCE SERVICE DISTRICT, FRED
JOSEPH, DOYLE CARTER, JEAN WHITLEY,
RAY MONGER AND CAROL SUE KOHLER

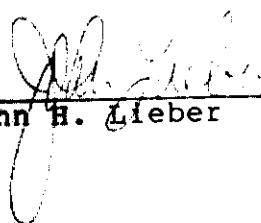
CERTIFICATE OF MAILING

I hereby certify that on the 6th day of December, 1989, a true and correct copy of the above and foregoing instrument was mailed with proper postage thereon fully prepaid to:

Tamsy R. Sandford, Esq.
P.O. Box 702004
Tulsa, Oklahoma 74170

C. Michael Gibson, Esq.
P.O. Box 205
Sapulpa, Oklahoma 74067

Allen Mitchell, Esq.
P.O. Box 190
Sapulpa, Oklahoma 74067


John H. Lieber

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 22 1991

THE CHURCH INSURANCE COMPANY,
Plaintiff,

vs.

VIRGINIA ANN SHAW, GLENN DALE
SHAW and DONALD MOSES,

Defendants.

No. 89-C-190-B

Jack C. Shaw, Clerk
U.S. DISTRICT COURT

J U D G M E N T

In accordance with the Order entered this date, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's, The Church Insurance Company, motion for summary judgment is SUSTAINED relative to the duty to indemnify the Defendant, Donald Moses, in the state court actions in the District Court of Rogers County (Glenn Dale Shaw, Plaintiff v. Donald Moses, Defendant, No. C-87-668, and Virginia Anne Shaw, Plaintiff v. Donald Moses, Protestant Episcopalian Church Foundation of the Diocese of Oklahoma, a corporation, d/b/a Episcopal Diocese of Oklahoma; also d/b/a St. Paul's Episcopal Church, Defendants, No. C-87-772), but is OVERRULED relative to the duty to defend.

IT IS FURTHER ORDERED AND ADJUDGED the Motions for Summary Judgment of the Defendants, Virginia Ann Shaw and Glenn Dale Shaw, are hereby OVERRULED.

IT IS FURTHER ORDERED AND ADJUDGED the Motion for Summary Judgment of the Defendant, Donald Moses, is OVERRULED relative to the duty to indemnify and is SUSTAINED relative to the duty to defend said state court actions.

The parties are to pay their own costs and attorneys' fees.

DATED this 27th day of January, 1990.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NMP CORP., an Oklahoma
corporation,

Plaintiff,

vs.

KIMPEX, INC., an Illinois
corporation; and SUK HO
KIM, an individual,

Defendants.

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Civil Action No. 89-C-769-B

ORDER

The Court has for its consideration the Joint Application for Dismissal of the above-referenced action filed by the Plaintiff, the corporate Defendant and the individual Defendant. Upon consideration of that Joint Application, and for good cause shown, it is hereby ordered that the Joint Application for Dismissal is granted and this case is hereby dismissed with prejudice.

Dated this 22nd day of January, 1990.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HELAINÉ C. DAVIS, her
husband, THOMAS W. DAVIS,

Plaintiffs,

vs.

SHERI D. CHANCELLOR, and
EQUITY FIRE & CASUALTY
INS. CO.,

Defendants.

No. 89-405-E

ORDER OF DISMISSAL

NOW on this 19 day of Jan, 1989⁹⁰, upon the
written application of the Plaintiffs, Helaine C. Davis and Thomas W.
Davis, and the Defendant, Sheri D. Chancellor, for a Dismissal With
Prejudice of the Complaint of Davis v. Chancellor, et al., and all
causes of action therein, the Court having examined said application,
finds that said parties have entered into a compromise settlement
covering all claims involved in the Complaint and have requested the
Court to dismiss said Complaint with prejudice to any future action.
The Court being fully advised in the premises finds said settlement is
to the best interest of the parties and that said Complaint should be
dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that
the Complaint and all causes of action therein, be and the same hereby
are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

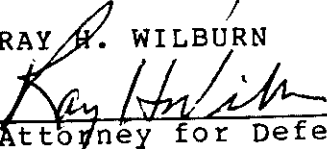
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS AS TO FORM AND CONTENT:

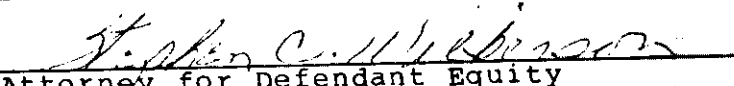
TIMOTHY E. MCCORMICK


Attorney for the Plaintiffs

RAY H. WILBURN


Attorney for Defendant Chancellor

STEPHEN C. WILKERSON


Attorney for Defendant Equity

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

THOMAS P. CONNELL and PATRICIA A.
CONNELL, husband and wife,

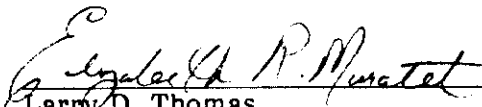
Defendant.

Case No. 89-C-492-B

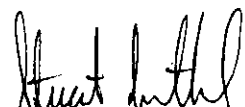
AGREED ORDER OF ~~PARTIAL~~ DISMISSAL

PURSUANT to the Agreement of all parties who have appeared herein, as indicated by the consent of their counsel of record below, IT IS HEREBY ORDERED that this action is hereby dismissed with prejudice and each party is to bear its own costs and expenses.

S/ THOMAS R. BREIT
UNITED STATES DISTRICT JUDGE


Larry D. Thomas
Elizabeth R. Muratet
Gable & Gotwals
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR THE FEDERAL
DEPOSIT INSURANCE CORPORATION


C. Rabon Martin
Stuart Southerland
Martin & Associates
1726 South Cincinnati
Tulsa, Oklahoma 74119

ATTORNEYS FOR THOMAS P. CONNELL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN NATIONAL PROPERTY)
AND CASUALTY COMPANY, A)
Foreign Corporation,)
Plaintiff,)

vs.)

Case No. 89-C-543-E

SHIRLEY SPECK, a/k/a)
SHIRLEY BUERGER, RUSSELL)
SPECK, a/k/a RUSSELL BUERGER)
LONNIE LYNN BUERGER, natural)
mother and next friend of)
KAYLYN NICOLE BUERGER, A)
Minor, and KATHRYN MARIE)
BAUGH, natural mother and)
next friend of KRYSTAL)
GAYLE BAUGH, A Minor,)
Defendants.)

AGREED ORDER OF DISMISSAL

NOW ON THIS 19th day of Jan., 1990 the above entitled cause comes on before the Honorable Magistrate Jeffrey Wolfe upon the Motion for Dismissal Without Prejudice of the Plaintiff, American National Property and Casualty Company. The Court finds that the parties have agreed to dismiss the above entitled cause without prejudice in accordance with the motion of American National Property and Casualty Company.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause shall be dismissed without prejudice.

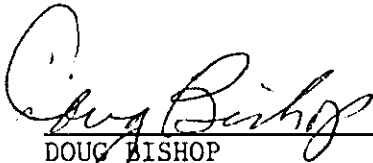
S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT
COURT

APPROVED AS TO FORM AND CONTENT:



RANDALL A. GILL, OBA #10309
Attorney for Plaintiff,
1400 South Boston Building
Suite 680
Tulsa, Oklahoma 74119
918/587-1988



DOUG BISHOP
Attorney for Defendants, Russell
and Shirley Speck/Buerger
4815 South Harvard, Suite 312
Tulsa, Oklahoma 74135

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
JAN 27 1990

NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff

v.

McMULLIN FAMILY TRUST,
CLINTON O. McMULLIN, and
LAURA J. McMULLIN,

Defendants

CIVIL NO. 87-C-17-E

FINAL JUDGMENT

This case came on to be heard on January 2 and 3, 1990, and pursuant to the Findings of Fact and Conclusions of Law entered herein, and pursuant to the Partial Granting of Summary Judgment entered on September 20, 1988, it is hereby ORDERED, ADJUDGED, and DECREED:

1. That Defendants Clinton O. and Laura J. McMullin (hereafter "defendants") are indebted to the United States for taxes, penalty and interest, in the following amounts and for the following years, plus interest thereon as provided by 26 U.S.C. Sections 6601 and 6621 from September 20, 1982, the date of assessment, to date of payment:

1977	\$1,233.02
1978	\$5,819.58
1979	\$1,306.84

Interest from date of assessment to January 10, 1990, equals \$10,801.52 for a total due as of January 10, 1990, of \$19,160.96, with interest accruing after that date pursuant to statute.

2. That certain conveyances made by defendants to the McMullin Family Trust are invalid and of no effect, and that said property is liable for the taxes due from defendants.

3. That the Federal Tax Liens arising under 26 U.S.C. Section 6321 attached to the following described property:

County of Mayes, State of Oklahoma, to wit: E 1/2SW-1/4NW-1/4:SW1/4SW1/4NW 1/4:SE 1/4NW 1/4 and NW1/4SW1/4NE1/4 of Section 12, Township 20, N. Range 21 E. of the I.B.M. consisting of 80 acres more or less.

Including all surface rights and 1/2 of all mineral rights, including Coal oil or gas, to the above described lands. Together with all the improvements thereon and the appurtenances thereto belonging.

This being the same parcel transferred by defendant Clinton O. McMullin to the McMullin Family Trust on June 23, 1982, and recorded at Book 601 Page 285 in the County Clerk's Office of Mayes County, Oklahoma and transferred to said Clint McMullin by deed dated February 20, 1962 recorded at Book 329 page 323 of said records.

4. That said Federal Tax Liens are hereby foreclosed to satisfy the liabilities listed herein and that the United States Marshall shall be commanded by the Clerk of this Court to seize and sell the property described above at public auction, in accordance with 28 U.S.C. Sections 2001, and 2002, and shall apply all proceeds therefrom to satisfy the above Federal Tax Liens. The United States shall have a Deficiency Judgment for any amounts unsatisfied from this foreclosure. The United States shall have any and all writs necessary to execute the terms of this judgment. It is further,

ORDERED, ADJUDGED AND DECREED, that the costs of this cause
are taxed against the defendants.

SIGNED this 19 day of Jan, 1990.

BY JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1990

ADVANCE-UNITED EXPRESSWAYS,
INC., Debtor-In-Possession,

Plaintiff,

vs.

MAGNETIC MEDIA, INC.,

Defendant.

Jack C. Brett, Clerk
U.S. DISTRICT COURT

No. 89-C-784 B

ORDER GRANTING DISMISSAL

NOW on this 19th day of January, 1990, the Joint Stipulation For Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

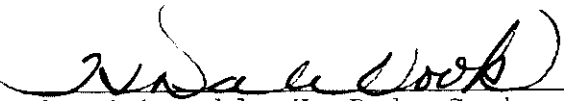
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

S/ THOMAS R. BRETT

Judge

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff recover judgment against the Defendant, THE BOARD OF COUNTY COMMISSIONERS OF NOWATA COUNTY in the sum of \$5,500 which includes costs and attorney's fees, and postjudgment interest at the statutorily allowed rate of 10% per annum which shall accrue from the date of the signing of this Order. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the BOARD OF COUNTY COMMISSIONERS, COUNTY TREASURER, and COUNTY CLERK of NOWATA COUNTY shall include this judgment in the sinking fund levy for Nowata County for the tax year 1990-1991 and thereafter until paid in full.

Dated this 19th day of January, 1990.


The Honorable H. Dale Cook
United States District Judge

LYONS & CLARK

ATTORNEYS AT LAW

TWO MAIN PLAZA
616 S. MAIN, SUITE 201

TULSA, OKLAHOMA 74119

TELEPHONE (918) 599-8844

MARK D. LYONS
KEVIN DANIELSON

CARY W. CLARK
(1950-1988)

INSTRUCTIONS

The dismissal with prejudice is predicated on the court signing the judgment that is agreed to between the Board of County Commissioners and the Plaintiff. In the event he does not sign that judgment, the dismissal is not to be signed. If there are any questions, please call either Mark Lyons or Kevin Danielson with this office.

Thank you.

RECEIVED
JAN 19 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

RECEIVED
JAN 17 1990
JACK C. SILVER, CLERK
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1990

U.S. DISTRICT COURT

MARY DOMINGUEZ,

Plaintiff,

vs.

No. 89-C-873 B

CITY OF BROKEN ARROW,
a municipal corporation;
LYLE PAYNE;
ROBERT GAYLE; and
PAUL KROUTTER.

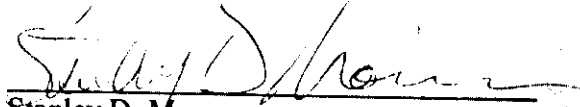
Defendants.

ORDER OF DISMISSAL

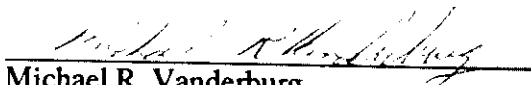
NOW on this 19th day of January, 1990, the above entitled cause come on before me, the undersigned Judge, upon the Stipulation of Dismissal, without prejudice, signed by Stanley D. Monroe, attorney for Plaintiff and Michael R. Vanderburg, attorney for Defendant. The Court, being fully advised in the premises, finds that this matter should be, and the same is hereby dismissed, without prejudice, and that each party shall bear its own costs incurred herein.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



Stanley D. Monroe
Attorney for Plaintiff



Michael R. Vanderburg
Attorney for Defendant

UNITED STATES OF AMERICA FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

STEVE GRIFFIN, a/k/a)
STEVE J. GRIFFIN, a/k/a)
STEVE JOSEPH GRIFFIN, a/k/a)
STEPHEN J. GRIFFIN,)

Defendant.)

CIVIL ACTION NO. 89-C-901-B

JAN 19 1990
Jack C. Simon, Clerk
U.S. DISTRICT COURT

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the sum of \$4,338.33 (\$3,839.43 principal, and \$498.90 in interest), as of August 30, 1989, plus interest thereafter at the rate of 3 percent per annum until judgment, plus postjudgment interest at the legal rate from the date of execution of this Agreed Judgment until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 5th day of January, 1990, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$145.00, and a like sum on or before the 5th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 36090 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

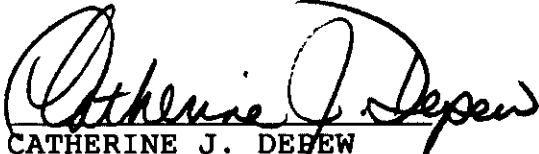
4. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

5. The defendant has the right of prepayment of this debt without penalty.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM;

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEFEW

Assistant United States Attorney


STEVE GRIFFIN

CJD/mp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH E. STEPHENS; SUE A.
STEPHENS; DORTHA M. STEPHENS;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JAN 19 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1009-B

ORDER

Upon the Motion of the United States of America acting on behalf of the Secretary of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, to which there are no objections, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 19 day of January, 1990.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DARREL REEDER,
Plaintiff,

vs.

CITY OF NOWATA, et al.,
Defendants.

Case No. 88-C-1649-C

FILED

JAN 19 1990

ORDER SETTING ASIDE JUDGMENT AND
DISMISSAL WITH PREJUDICE

Jack C. Silver, Clerk
U.S. DISTRICT COURT

This matter comes on for consideration of the joint motion of the plaintiff, DARREL REEDER, and the defendant the BOARD OF COUNTY COMMISSIONERS OF NOWATA COUNTY to set aside the judgment previously entered against the defendant HAROLD LAY on March 16, 1989. For good cause shown and at the request of the plaintiff and defendant, this court hereby orders that the judgment previously entered against HAROLD LAY is hereby set aside and held for naught. Furthermore, at the request of both parties, this court hereby dismisses the defendant HAROLD LAY from this lawsuit with prejudice against refiling.

SO ORDERED this 19 day of January, 1990.


HONORABLE H. DALE COOK
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAN 18 1990 *JV*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

TOMMY M. BRITT,

Petitioner,

v.

STEPHEN KAISER, Warden,

Respondent.

89-C-662-E ✓

ORDER


The Court has for consideration the Report and Recommendation of the United States Magistrate filed October 17, 1989 in which the Magistrate recommended that the Petition for Writ of Habeas Corpus be denied.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Petition for Writ of Habeas Corpus is denied.

Dated this 18th day of Jan., 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
STATE OF OKLAHOMA

VERNON GILSTRAP, II,

Plaintiffs,

vs.

Case No. 89-C-064-E

CIRCLE K CORPORATION, a
Texas Corporation,

Defendant.

JUDGMENT

In keeping with the Order of this Court of the 21st day of December, 1989, Judgment is hereby entered in favor of the Defendant, Circle K Corporation, and against the Plaintiff, Vernon Gilstrap, II, that Plaintiff take nothing, and that this action be dismissed on its merits.

Dated this 17 day of January, 1990.

JAMES C. ELLISON

James C. Ellison, United
States District, Northern
District of Oklahoma

APPROVED AS TO FORM AND CONTENT:

JOSEPH F. BUFOGLE
Attorney of Plaintiff

SECRET & HILL
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:)	Bankruptcy Case No.
)	89-01818-C
PETROPLEX, INC.,)	(Chapter 11)
)	
Debtor.)	Appeal No. 89-C-826-E

ORDER OF DISMISSAL OF APPEAL

Upon consideration of the Motion for Voluntary Dismissal of Appeal filed by appellant, CG&R, the Court finds that the captioned appeal should be and is hereby dismissed.

Dated: January 17th, 1990.

S/ JAMES O. ELLISON
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 18 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

GATX LEASING CORPORATION, A
Delaware Corporation,

Plaintiff,

vs.

No. 89-C-689-B

GOLF CARTS OF OKLAHOMA, INC., an
Oklahoma Corporation, DON ADAMS,
and SHIRLEY ADAMS,

Defendants.

DEFAULT JUDGMENT

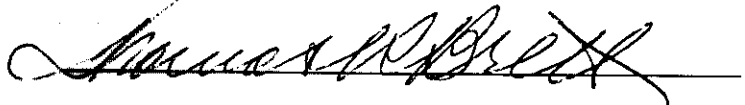
This matter comes before the Court upon Plaintiff GATX Leasing Corporation's Motion for Default Judgment. The Court conducted an inquiry into the sufficiency of Plaintiff's search to determine the names and whereabouts of Defendant Don Adams and Defendant Shirley Adams, who were served herein by publication, and based on the evidence adduced, the Court finds that Plaintiff has exercised due diligence and has conducted a meaningful search of all reasonably available sources at hand. The Court approves the publication services given herein as meeting both statutory requirements and the minimum standards of State and Federal due process.

Further, it appears that each and every Defendant herein is in default and that the Clerk of the United States District Court has previously searched the records and entered the Default of the Defendants. It appears from Plaintiff's Affidavit for Entry of Default that the Defendants are indebted to the Plaintiff in the

amount of \$222,592.46, and that neither Defendant Don Adams nor Defendant Shirley Adams is in the military service of the United States, an infant or incompetent person.

In accord with the Entry of Default, the Court hereby enters judgment in favor of the Plaintiff, GATX Leasing Corporation, and against the Defendants, Golf Carts of Oklahoma, Inc., Don Adams, and Shirley Adams, individually, for the amount of \$222,592.46, plus prejudgment and post-judgment interest at the rate of 18 per cent per annum from April 15, 1989, until paid. Costs and attorney fees may be awarded upon proper application pursuant to local Rule 6.

DATED this 12 day of January, 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

1-1-1990

ROYCE LATIMER d/b/a
GEOPHYSICAL EXPLORATION
AND RESEARCH CO.,

Plaintiffs,

vs.

COPPERHEAD ENTERPRISES,
INC., et al.,

Defendants.

No. 88-C-308-E

Jack C. Silver, Clerk
U.S. District Court

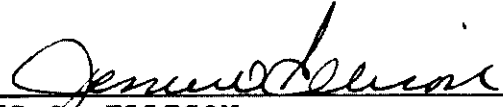
ADMINISTRATIVE CLOSING ORDER

Defendants have advised the Court that an underlying state court action is pending which affects the issues in this case. Defendants request that all matters in this case be stayed pending the outcome of the state court action. No objections have been filed. The Court finds that it is appropriate in these circumstances to administratively terminate these proceedings pending the outcome of the state action. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and the parties are directed to file an application to reopen these proceedings within thirty (30) days of the outcome of the

state court action or this action will be deemed dismissed with prejudice.

ORDERED this 18th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

F I L M

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July 6

INTERSTATE COMMERCE COMMISSION,)
)
 Plaintiff,)
) Civil Action No. 89-C-864E
 vs.)
) PERMANENT INJUNCTION
 ARDIS ANN MEYER, an individual,)
)
 Defendant.)

This cause is before the Court for entry of judgment based upon the Complaint, and the consent of the Plaintiff and the Defendant Ardis Ann Meyer. The Court has made and filed its Findings of Fact and Conclusions of Law herein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, Ardis Ann Meyer, her agents, employees, representatives, and all persons in active concert or participation with her, be permanently enjoined from, in any manner or by any device, operating, or holding herself out to operate, as a motor carrier of passengers over public highways in interstate or foreign commerce for compensation, unless:

(a) there is in effect and on file with the Interstate Commerce Commission, in the manner and amounts prescribed, an acceptable surety bond, certificate of insurance or proof of self-insurance, conditioned to pay any final judgment recovered

against Defendant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance or use of motor vehicles, or for loss of or damage to property of others; and

(b) there is in effect an appropriate certificate, permit, or license issued by the Interstate Commerce Commission authorizing such operations.

The parties shall bear their own costs in this matter.

Dated this 18 day of Jan, 1989. 20

W. S. LEBRON

UNITED STATES DISTRICT JUDGE

Entry of the foregoing is agreed to by the parties.

INTERSTATE COMMERCE COMMISSION

By: Judith A. Rutledge
JUDITH A. RUTLEDGE
Attorney for Plaintiff
INTERSTATE COMMERCE COMMISSION
411 West 7 Street, Suite 510
Fort Worth, TX 76102
(817) 334-3857 FTS & Commercial
Texas Bar No. 17460500

Ardis Ann Meyer
ARDIS ANN MEYER
Defendant
206 S. River Street
Commerce, OK 74339
918-675-4690

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
1990

INTERSTATE COMMERCE COMMISSION,) Civil Action No. 89-C-863E
Plaintiff,)
vs.)
CLAYTON EDWARD TYNER,) PERMANENT INJUNCTION
an individual,)
Defendant.)

This cause is before the Court for entry of judgment based upon the Complaint, and the consent of the Plaintiff and the Defendant Clayton Edward Tyner. The Court has made and filed its Findings of Fact and Conclusions of Law herein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, Clayton Edward Tyner, his agents, employees, representatives, and all persons in active concert or participation with him, be permanently enjoined from, in any manner or by any device, operating, or holding himself out to operate, as a motor carrier of passengers over public highways in interstate or foreign commerce for compensation, unless:

(a) there is in effect and on file with the Interstate Commerce Commission, in the manner and amounts prescribed, an acceptable surety bond, certificate of insurance or proof of self-insurance, conditioned to pay any final judgment recovered

against Defendant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance or use of motor vehicles, or for loss of or damage to property of others; and

(b) there is in effect an appropriate certificate, permit, or license issued by the Interstate Commerce Commission authorizing such operations.

The parties shall bear their own costs in this matter.

Dated this 18 day of Jan, 1989.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

Entry of the foregoing is agreed to by the parties.

INTERSTATE COMMERCE COMMISSION

By: Judith A. Rutledge
JUDITH A. RUTLEDGE
Attorney for Plaintiff
INTERSTATE COMMERCE COMMISSION
411 West 7th Street, Suite 510
Fort Worth, TX 76102
(817) 334-3857 FTS & Commercial
Texas Bar No. 17460500

Clayton Edward Tyner
CLAYTON EDWARD TYNER
Defendant
Box 646
Quapaw, OK 74363
(918) 675-4521

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

entered
FILED

JAN 18 1990

T. D. WILLIAMSON, INC.,
Plaintiff,

vs.

DWANE ODELL LAYMON, and
ELECTRONIC PIGGING SYSTEMS,
INC., an Oklahoma corporation,
Defendant.

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No. 83-C-84-C

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Now before the Court for its consideration are defendants' motion for judgment notwithstanding the verdict and/or for a new trial, and plaintiff TDW's motion to lift the stay created by defendants' motion under Rule 24 of the Rules of the U. S. District Court for the Northern District of Oklahoma. The Court has reviewed the parties' briefs and exhibits, as well as the applicable statutory and case law and is ready to rule on these motions.

As the parties have noted, defendants' motion for judgment notwithstanding the verdict, filed pursuant to F.R.Cv.P. 50, is procedurally incorrect here. The Court will therefore confine its treatment of defendants' motion as one for a new trial under F.R.Cv.P. 59(a)(2).

Only three grounds have been recognized in non-jury cases, such as this one, to provide a basis for granting a new trial: 1)

394

manifest errors of law, 2) manifest errors of fact, and 3) newly discovered evidence. See Agola v. Hagner, 678 F.Supp. 988, 991 (E.D.N.Y. 1987). In support of their motion, defendants maintain that the Court erred in upholding the Special Master's finding that the Kopp pig was not an acceptable, noninfringing substitute in North and South America during the relevant period. Defendants claim the existence of newly discovered evidence to support their argument that errors of fact were committed with regard to the Kopp pig's status as an acceptable noninfringing substitute in North and South America during the relevant period.

The Court first will consider the question of whether the defendants' claim of newly discovered evidence qualifies as such under F.R.Cv.P. 59. In reviewing the defendants' assertions of their newly discovered evidence, the Court notes the standard by which such evidence must be judged.

Before a new trial may be granted on the basis of newly discovered evidence, there must be a showing that the alleged newly discovered evidence was discovered since the trial; facts from which the court may infer reasonable diligence on the part of the moving party; that the evidence is not merely cumulative or impeaching; that the evidence is material; and the evidence is of such a character that on a new trial it will probably produce a different result.

McCulloch Tool Company v. Well Surveys, Inc.,
343 F.2d 381, 410 (10th Cir. 1965).

With regard to defendants' assertions that the Blanford paper and Blanford's Declaration are "newly discovered evidence", the Court notes that these documents were offered by the parties at the hearing before the Court on June 2, 1989, concerning the parties' objections to the Special Master's proposed findings on damages, and were reviewed by the Court in preparing its Order of September

21, 1989. The Court thus does not consider these documents to be "newly discovered" to provide a basis for granting defendants' motion for a new trial.

In providing the Court with their "Declaration of Gunnar Kopp", dated October 17, 1989, defendants have not shown the Court that this "evidence" was "discovered" after the damages hearing or the hearing on objection in June, 1989. The Court has not been provided with any facts by which it could infer reasonable diligence to obtain this evidence on the part of the defendants; to the contrary, the content and date of the "Declaration" lead one to suspect that this "evidence" was obtained as an afterthought to the Court's Order of September 21, 1989. However, more important than the Court's concerns on the "newness" of defendants' proffered "Declaration of Gunnar Kopp", is the fact that the "Declaration" is inadmissible as hearsay. See N.L.R.B. v. McClure Associates, Inc., 556 F.2d 725, 726 (4th Cir. 1977) (affidavit inadmissible since it was not a deposition taken in compliance with law in same or another proceeding, was unreliable and not subject to cross-examination, and did not have circumstantial guarantees of trustworthiness). The Court therefore finds that the "evidence" claimed by defendants as "newly discovered" does not qualify as such, and thus does not provide a basis for granting a new trial on damages.

Similarly, the Court is not persuaded by defendants' arguments of error of fact as a reason to grant a new trial to consider whether the Kopp pig was an acceptable, noninfringing substitute

in North and South America during the relevant period. Defendants present the same arguments they presented to the Court in their objection to the Special Master's findings on the Kopp pig: that the Kopp pig's "availability" world-wide makes it an acceptable noninfringing substitute in North or South America during the relevant period. As the Court has previously found, the record supported the Special Master's finding of fact that the Kopp pig was not used in North or South America until after the relevant period. Without evidence to rebut that finding, defendants ask the Court to deny TDW damages on the speculation that a willing buyer in North or South America "could have" used the Kopp pig's services in place of those of defendants' infringing pig during the relevant period. Obviously, the Court cannot make such a speculation.

TDW is required to show only to a "reasonable probability that [it] would have made some or all of the sales" of the defendants' infringing pig. See Water Technologies Corp. v. Calco, Ltd., 850 F.2d 660, 671 (Fed.Cir. 1988). On the record before the Court, TDW demonstrated a reasonable probability that it would have made some if not all of defendants' geometric pig service sales with its patented caliper pig in North and South America during the relevant period.

For the reasons discussed above, the Court finds that the defendants' motion for new trial should be DENIED.

With the Court's denial of defendants' motion for a new trial, the stay created under Rule 24 of the U. S. District Court for the

Northern District of Oklahoma is no longer in effect and plaintiff TDW's motion to lift that stay is thereby mooted.

IT IS SO ORDERED this 16th day of January, 1990.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ADVANCE-UNITED EXPRESSWAYS,
INC., Debtor-In-Possession,

Plaintiff,

vs.

No. 89-C-783 E

HINDERLITER INDUSTRIES, INC.,

Defendant.

ORDER GRANTING DISMISSAL

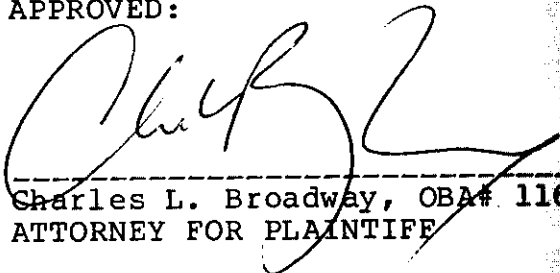
NOW on this 17th day of January, 19⁹⁰, the Joint Stipulation For Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

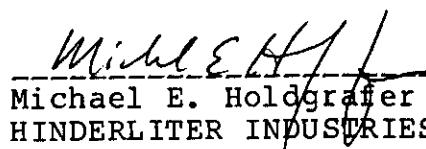
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

S/ JAMES O. ELLISON

Judge

APPROVED:


Charles L. Broadway, OBA# 11624
ATTORNEY FOR PLAINTIFF


Michael E. Holdgrafer
HINDERLITER INDUSTRIES, INC.

UNITED STATES OF AMERICA FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
1 1990

UNITED STATES OF AMERICA

Plaintiff,

vs.

RICHARD J. HARSHMAN,
a/k/a DR. RICHARD HARSHMAN,

Defendant.

CIVIL ACTION NO. 89-C-841-E

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the sum of \$13,367.07 plus accrued interest of \$5,121.42 as of May 27, 1989, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest at the legal rate from the date of execution of this Agreed Judgment until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information

which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 5th day of January, 1990, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$75.00, and a like sum on or before the 5th day of each following month until July 5, 1990, when defendant has agreed to increase the monthly payments to a minimum of \$200.00 per month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

6. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiff have and recover judgment against the defendant, Richard J. Harshman, a/k/a Dr. Richard Harshman, in the principal amount of \$13,367.07, plus accrued interest of \$5,121.42 as of May 27, 1989, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.74 percent per annum until paid, plus the costs of this action.

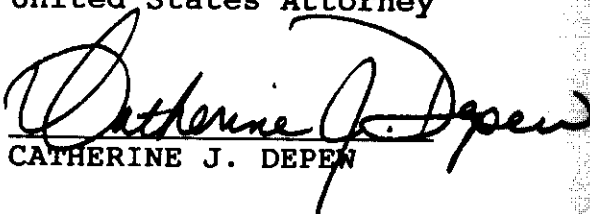
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED;

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW


RICHARD J. HARSHMAN

1/4/90

mmp

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAVID C. GOODMAN

Plaintiff,

v.

OTIS R. BOWEN, M.D., SECRETARY OF
HEALTH AND HUMAN SERVICES

Defendant.

88-C-1519-E

FILED

11 1 1990

Jack C. Ellison, Clerk
U.S. District Court

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed December 27, 1989 in which the Magistrate recommended that the case be remanded to the Secretary to afford claimant the opportunity to subpoena and cross-examine Dr. Hughes and offer evidence in rebuttal if desired.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the case is remanded to the Secretary to afford claimant the opportunity to subpoena and cross-examine Dr. Hughes and offer evidence in rebuttal if desired.

Dated this 17th day of Jan., 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ED HUGHES,

Plaintiff,

vs.

FRED M. SCHRAEDER,

Defendant.

FILED

JAN 17 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-136-C

JUDGMENT BY CONSENT


NOW, on this 16 day of January, 1990, this
cause came on for a Settlement Conference Hearing before the
Honorable John Leo Wagner, United States Magistrate, presiding,
and the Court finds as follows:

1. That the Court reduced the settlement to judgment by
consent with no liability.

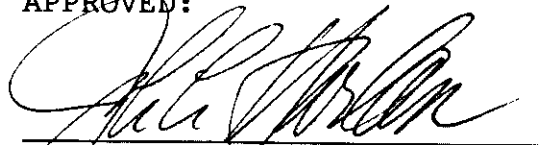
2. That Defendant Fred M. Schraeder agrees to pay to
Plaintiff Ed Hughes the sum of \$10,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court
that the settlement is reduced to judgment by consent with no
liability and that defendant pay to plaintiff the sum of
\$10,000.00 which is payable as follows:

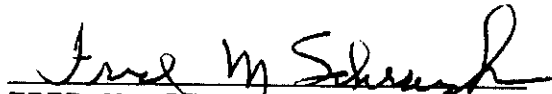
1. \$2,500.00 payable on February 1, 1990; and
2. \$7,500.00 with applicable post-judgment interest at the
rate of 7.66% commencing on March 1, 1990, payable in equal
installments, for twenty-four months until paid in full.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPROVED:



JOHN L. HARLAN
Attorney for Plaintiff



FRED M. SCHRAEDER #7931
Defendant, Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1990

JACK S. SILVER, CLERK
U.S. DISTRICT COURT

EDWARD PARSON and CHARLENE PARSON,)

Plaintiffs,)

vs.)

Case No. 89-C-267-B

TIM JAMES, an individual; GARY
ROHT, an individual; and CITY
OF CLAREMORE, a municipal
corporation,)


Defendants.)

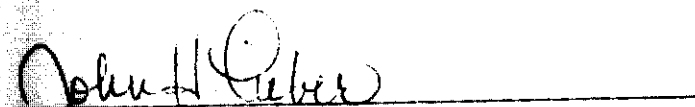
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties and hereby stipulate that this lawsuit be
dismissed with prejudice.


CHARLENE PARSON


EDWARD PARSON


JAMES GARLAND, III
ATTORNEYS FOR PLAINTIFFS


JOHN H. LIEBER,
ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHIRLEY THOMPSON, Next of kin to
BARBARA SUE RUTLEDGE, Deceased,
Plaintiff,

v.

ROY ZBINDEN, an individual, and
YELLOW FREIGHT SYSTEM, INC., a foreign
corporation,
Defendants.

No. 89-C-165-C

FILED

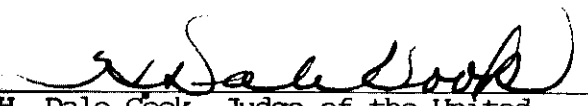
JAN 17 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

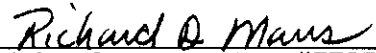
JUDGMENT

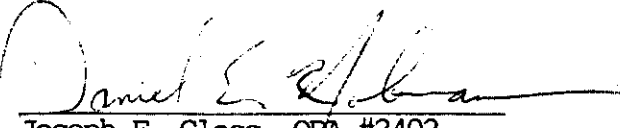
Now on this 21st day of December, 1989, comes on to be heard the oral application of the Defendants, Roy Zbinden and Yellow Freight System, Inc., that judgment be entered upon the jury verdict. Upon due consideration, said application is sustained, and the Court hereby enters judgment in favor of the Defendants, Roy Zbinden and Yellow Freight System, Inc., and against the Plaintiff, Shirley Thompson, next of kin to Barbara Sue Rutledge.

IT IS SO ORDERED!


H. Dale Cook, Judge of the United
State District Court

Approved as to form and content:


Richard Marrs, OBA #5705
Timothy Gilpin, OBA #11844
Attorneys for Plaintiff


Joseph F. Glass, OBA #3402
Daniel E. Holeman, OBA #11865
Attorneys for Defendants

336-122/DEH/mc

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1990

JIMMIE R. WILLIAMS,
Co-Independent Executor of
the Estate of J.S. WILLIAMS,
JR., Deceased,

Plaintiff,

vs.

ELWIN L. WAGG, and GLIDEWELL
DISTRIBUTING COMPANY, INC.,
an Arkansas corporation,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-448-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 28th day of November, 1989, there came on for hearing, pursuant to regular assignment, the settlement conference in the above captioned matter. Plaintiff appeared in person together with his sister Linda K. Garner, and by their attorney, Leonard Logan, and the Defendants appeared by their attorney, John B. Stuart, and Robert Izlar, and in open Court all parties waived a jury trial.

The Court being advised in the premises finds that Jimmie R. Williams, by Order of the District Court of Falls County, State of Texas, has been appointed Co-Independent Executor of the Estate of J.S. Williams, Jr., deceased. The Court further finds that an Order was filed June 29, 1988, dismissing Elmer L. Wagg with prejudice.


The Court further finds that this action has been brought by Jimmie R. Williams, individually, as surviving son of J.S. Williams, Jr., deceased, as Co-Independent Executor of the Estate of J.S. Williams, Jr., deceased, and on behalf of all heirs at law and next

of kin of J.S. Williams, Jr., deceased, with the exception of Bernice Williams, the decedent's widow, who has heretofore settled all her claims in this matter, pursuant to the technical requirements of Title 12, Oklahoma Statutes 1051, 1052 and 1053.

The Court further finds that J.S. Williams, Jr., deceased, died instantly as the result of an accident on May 14, 1987, and that all the proceeds of said settlement inure directly to the benefit of Jimmie Williams, individually, as surviving son of J.S. Williams, Jr., deceased, as Co-Independent Executor of the Estate of J.S. Williams, Jr., deceased, and on behalf of all heirs at law and next of kin of J.S. Williams, Jr., deceased, with the exception of Bernice Williams, as referenced above.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Jimmie R. Williams, individually, as surviving son of J.S. Williams, Jr., deceased, as Co-Independent Executor of the Estate of J.S. Williams, Jr., deceased, and on behalf of all heirs at law and next of kin of J.S. Williams, Jr., deceased, with the exception of Bernice Williams, as referenced above, have and recover judgment against the Defendant in the sum of ONE HUNDRED ELEVEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$111,750.00), for which let execution issue.

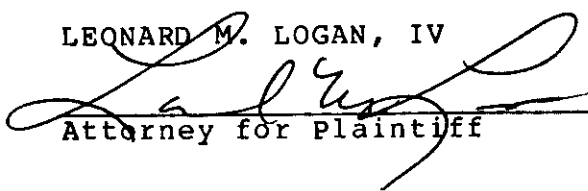
IT IS FURTHER ORDERED THAT the Clerk file and enter any satisfaction of judgment herein tendered for filing by Plaintiff or Defendants evidencing payment of the total sum of ONE HUNDRED ELEVEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$111,750.00), after the costs of this action have been paid.



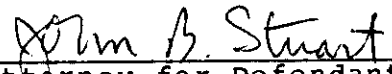
Chief U.S. District Judge

APPROVALS:

LEONARD M. LOGAN, IV


Attorney for Plaintiff

JOHN B. STUART


Attorney for Defendants

entered

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JAN 10 1990

JACOB J. MCGLOTHLIN
U.S. DISTRICT COURT

PEARL DORSEY,

Plaintiff,

vs.

No. 88-C-827-C

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

ORDER

Now before the Court for its consideration are the motions of plaintiff for attorney fees.

On January 24, 1989, this Court entered an Order remanding this action to the Secretary of Health and Human Services for further proceedings. Those further proceedings have resulted in plaintiff being awarded benefits.

Plaintiff has filed two motions, each relying upon a different statute. The first, denominated application under the Equal Access to Justice Act (EAJA), relies upon 28 U.S.C. §2412(d)(1)(A). That section provides as follows:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

The government has responded that it does not oppose an attorney fee award, but objects to the amount sought (25.35 hours

21

at \$100.00 per hour for a total of \$2,535.00). 28 U.S.C. §2412(d)(2)(A) requires a limitation of \$75.00 per hour, absent a Court determination as to increase in cost of living or a special factor. Submission of evidence as to cost of living increase does not require an increase in attorney fees awarded. Headlee v. Bowen, 869 F.2d 548 (10th Cir. 1989). The Court has determined that no increase is required in this case. Therefore, the 25.35 hours shall be multiplied by \$75.00 per hour, plus \$148.60 in costs, for a total award of \$2,049.85.

Plaintiff's other motion, denominated application for attorney fees, relies upon 42 U.S.C. §406(b)(1), which provides in pertinent part that

Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.


Counsel seeks an award of \$2,918.75. The amount of past-due benefits to plaintiff was \$9,714.95. Twenty-five percent of that amount is \$2,428.73. It is therefore the latter amount which is proper. Under the mandate of Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986), in order to prevent double recovery, the smaller amount of the awards under the two statutes is to be paid to the client.

It is the Order of the Court that the application of plaintiff for attorney fees is hereby granted in the amount of \$2,428.73.

It is the further Order of the Court that the application of plaintiff under the Equal Access to Justice Act is hereby granted

in the amount of \$2,049.85, with counsel directed to pay this amount directly to his client.

IT IS SO ORDERED this 16th day of January, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

Entered

JUL 11 1989
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

LILLIAN GRAHAM,

Plaintiff,

vs.

No. 86-C-516-C

AMERICAN AIRLINES, INC.,
a corporation,

Defendant.

ORDER

Before the Court is the application of the defendant for Order awarding partial attorney fees. On August 11, 1989, this Court entered judgment against the plaintiff in this action under Title VII of the Civil Rights Act of 1964. Defendant now seeks recovery of those fees incurred in litigating plaintiff's allegations that defendant violated Federal Aviation Administration (FAA) regulations in its engine record-keeping practices. This issue was extensively litigated during the trial. In Christianburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 422 (1978) the Supreme Court held that a plaintiff in cases such as this should not be assessed his opponent's attorney's fees unless a court finds his claim was frivolous, unreasonable, or groundless, or that plaintiff continued to litigate after it clearly became so. Initially, this Court notes that an award of fees is based upon the claim (i.e., the lawsuit itself) being frivolous, not a collateral matter raised within the trial of the lawsuit. The

Court does not make a finding that the plaintiff's claim of sexual discrimination meets the Christianburg test.

Defendant points to a letter sent by the FAA to plaintiff indicating that the FAA's investigation had revealed no violations by defendant. However, the Court does not believe that such a letter, particularly absent any details of the FAA investigation, precludes plaintiff from litigating the issue if there was an objectively reasonable basis for doing so. The state of defendant's records, in the Court's view, presented such a basis. "The strict nature of the Christianburg standard is premised on the need to avoid undercutting Congress' policy of promoting vigorous prosecution of civil rights violations under Title VII and §1983." Miller v. Los Angeles County Bd. of Educ., 827 F.2d 617, 619 (9th Cir. 1987). The Court is not persuaded that an award is appropriate under these facts.

It is the Order of the Court that the application of the defendant for Order awarding partial attorney fees is hereby DENIED.

IT IS SO ORDERED this 16th day of January, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SAMMIE SCUGGINS,

Plaintiff,

vs.

Case No. 89-C-189-C

INSURANCE AND RISK MANAGEMENT, INC.,

Defendant.

FILED

JAN 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

The parties having settled the above-captioned matter is ordered that the same
be dismissed with prejudice.

(Signed) R. Dale Cook

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES PACK,

Plaintiff,

v.

TIM JEFFIERS, et al,

Defendants.

89-C-358-C

FILED

JAN 16 1990

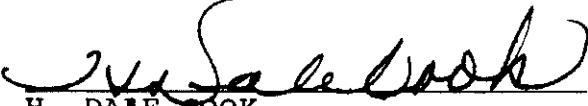
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Now before the court is defendants' Motion to Dismiss plaintiff's civil rights complaint. Although plaintiff failed to respond to defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on August 3, 1989, the court, sua sponte, entered an order giving plaintiff an extension of time in which to respond to this motion. However, the order was returned to the Court Clerk's Office in its envelope marked "Return to Sender" with an indication that Mr. Pack was unknown at his last known address. There has been no correspondence received from plaintiff advising the court of his present whereabouts.

It is therefore ordered that plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is hereby dismissed without prejudice for failure to prosecute and defendants' Motion to Dismiss is rendered moot.

Dated this 12th day of January, 1990.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 16 1990

JACK S. SILVER, CLERK
U.S. DISTRICT COURT

HATHAWAY CORPORATION, a
Colorado corporation,

Plaintiff,

-vs-

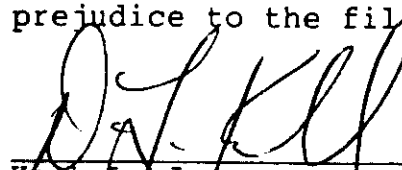
HYOSUNG (AMERICA), INC.,
a/k/a Hyosung Computer, a
New York corporation,

Defendant.

Case No. 89-C-421 E


JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Hathaway Corporation, and Defendants, Hyosung (America), Inc., a/k/a Hyosung Computer and Tong Yang Nylon Co., Ltd., by and through their respective attorneys of record, hereby stipulate and agree that this action and all claims asserted herein by any party should be and are hereby dismissed with prejudice to the filing of any future action.


Kent L. Jones
Donald L. Kahl

Of the Firm:
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

Attorneys for Defendants,
Hyosung (America), Inc.,
a/k/a Hyosung Computers and
Tong Yang Nylon Co., Ltd.


Keith F. Sellers
Robert Alan Rush

Of the Firm:
HOLLIMAN, LANGHOLZ, RUNNELS,
& DORWART, P.C.
Suite 700, Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Plaintiff,
Hathaway Corporation

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GUARANTY FEDERAL
Plaintiff(s),

vs.

No. 88-C-1232-C

FIRST TULSA PARTNERS, ET AL
Defendant(s).

FILED
JAN 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 12th day of January, 1990.


UNITED STATES DISTRICT JUDGE

Entered

JAN 11 1990
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

ROBERT RANDALL ZIEGLER,
Plaintiff,

vs.

No. 83-C-248-C

RON CHAMPION,
Defendant.

ORDER

Now before the Court for consideration is the Motion for Reconsideration of Robert Randall Ziegler.

The petitioner is currently incarcerated serving five 100-year consecutive sentences and one ten-year consecutive sentence. On February 9, 1989, petitioner filed a Petition for a Writ of Habeas Corpus raising seven grounds for relief. In an Order dated August 14, 1989, this Court denied the petitioner's claim of habeas relief, upholding the Magistrate's recommendation of May 30, 1989. The petitioner, citing a recent Oklahoma Court of Criminal Appeals case, and otherwise many of the same arguments, now asks this Court to reconsider its previous order regarding this matter.

This Court has made a thorough analysis of all eight grounds raised by petitioner in his motion to reconsider and found that the motion should be denied. Each ground will be discussed in order.

As his Ground One for reconsideration, petitioner argues that a recent Oklahoma Court of Criminal Appeals case supports his

contention that it was improper to resentence the petitioner before a new jury. The petitioner contends Dean v. State, 778 P.2d 476 (Okla.Cr. 1989), held that resentencing before a new jury is proper only when a statute is declared unconstitutional and there is no minimum sentence for the convicted crime. The petitioner grossly misstates Dean. This case involved a bifurcated proceeding where the jury became deadlocked on the punishment issue. The jury was discharged and the trial court imposed sentence. However, the trial court granted the prosecution's motion for a new trial, a different jury was impaneled, and a much greater sentence was imposed. The Oklahoma Court of Criminal Appeals held no statutory provision exists for reconvening "a second jury in the criminal trial proceeding, different from that which determined guilt, solely for the purpose of resentencing." Id. at 478. In contrast, petitioner was resentedenced following a determination by this Court that he was sentenced under a statute later found to be unconstitutional. In petitioner's case, it was not the original trial proceeding in which the resentencing occurred, but a separate proceeding several years after the original conviction and sentencing. Therefore, Dean is limited to situations where the second jury is reconvened in the original action, which was definitely not the case for Ziegler.

Further, in Dean, the Oklahoma Court of Criminal Appeals distinguished Nipps v. State, 626 P.2d 1349 (Okla.Cr. 1981), which authorized a resentencing procedure only in cases where the statute under which a defendant is sentenced is later declared

unconstitutional. Nipps also emphasized that no lower limit was provided by the statute. These are precisely the circumstances which caused Ziegler to be resentenced. The petitioner erroneously argues that the Unauthorized Use of a Motor Vehicle statute which he was sentenced under has no lower limit. It is clear that the unauthorized use statute which Ziegler was sentenced under, 47 Okla.Stat. §4-102 (1971), does not have a lower limit.¹ Petitioner's reliance on Dean as a source for reconsideration is unfounded and erroneous. However, even assuming arguendo that Dean is applicable to petitioner's case, his circumstances are such that they would fall within the exception provided for in Dean as set out in Nipps. That is, that the statute under which the defendant was sentenced was declared unconstitutional and has no lower limit. Therefore, petitioner may be resentenced by a new jury.

As his Second Ground for reconsideration, petitioner alleges it was error to deny him the opportunity to present evidence of innocence. In support of this proposition, petitioner again cites Dean. In the Magistrate's recommendation of May 30, 1989, adopted by this Court by Order of August 14, 1989, this very argument was held to be without merit. Dean, for the reasons stated under Ground One, is not applicable to petitioner's situation.

As his Third Ground for reconsideration, petitioner alleges this Court's order is contrary to the Magistrate's findings regarding evidence of innocence. In his recommendation of May 30,

¹This section provides that: "A person not entitled to possession of a vehicle who, without consent of the owner and with intent to deprive him, temporarily or otherwise, of the vehicle or its possession, takes, uses or drives the vehicle is guilty of a felony." 47 Okla.Stat. §4-201 (1971).

1989, the Magistrate denied petitioner's claim to present evidence of innocence or mitigating circumstances. This Court affirmed the Magistrate's recommendation in its Order of August 14, 1989. This Order was in no way contrary to the Magistrate's findings of May 30, 1989.

Petitioner's appeal of this Court's denial of his habeas corpus petition is a decision within his own discretion and, as such, does not affect or alter the rulings of this Court.

As his Fourth Ground for reconsideration, petitioner alleges that the Magistrate and this Court erroneously ruled that petitioner has not shown that motions to produce were filed to meet the requirements of Brady v. Maryland, 373 U.S. 83 (1963).

The petitioner presents no evidence that he in fact made a formal request or that such evidence is material. Therefore, petitioner does not show the Magistrate's finding to be incorrect.

As his Fifth Ground for reconsideration, petitioner alleges this Court has interpreted state law erroneously in light of the Dean decision. For the reason stated under Ground One of this order, Dean is not applicable to petitioner's situation.

As his Sixth Ground for reconsideration, petitioner alleges that the Magistrate committed error in concluding that petitioner was resentenced under 21 O.S. 1971 §51(A) which was an ex post facto application of the statute. The petitioner relies solely on a dissenting opinion for this argument. Such reliance has no validity.

As his Seventh Ground for reconsideration, petitioner alleges that to apply a punishment enhancement retroactively is an ex post facto violation; and where error is committed regarding the enhancement during the punishment stage at trial, resentencing must be without enhancement.

The petitioner cites Justice Rehnquist's dissent in Hicks v. Oklahoma, 447 U.S. 343 (1980) and Thigpen v. State, 571 P.2d 467 (Okla.Cr. 1977), as supporting his proposition that to retroactively apply a punishment scheme violates ex post facto. The petitioner misreads and misinterprets both of those cases in supporting his claim. Although in his Hicks dissent Justice Rehnquist speaks of disparate treatment and a disfavored class, nowhere is any mention made of retroactive application of a punishment scheme or ex post facto violation. These were not issues in this case. In fact, in the citation relied upon by petitioner, Justice Rehnquist argues that because Hicks was given the benefit of the more lenient mandatory sentencing provision, 21 O.S. 1971 §51(B), he was not entitled to federal equal protection. Similarly, Thigpen in no way supports any of petitioner's allegations regarding an ex post facto violation.

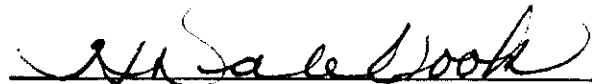
As to the claim of no enhancement being allowed when error is committed during the penalty stage, petitioner cites Mitchell v. State, 659 P.2d 366 (Okla.Cr. 1983). This case, however, is concerned with the issue of the burden of proof the state has in proving that defendant has been convicted of a prior felony. This

case has no reliance and nothing else can be found to support petitioner's contentions.

As his Eighth Ground for reconsideration, petitioner alleges that 22 O.S. 1981 §952 and Dean prohibit resentencing in circumstances such as his. This is merely a reiteration of the same argument made throughout petitioner's motion for reconsideration. For the reason stated under Ground One, Dean does not apply. The petitioner falls within the Nipps exception allowing the reconvening of a new jury for the sole purpose of resentencing where the statute under which the appellant is sentenced is later declared unconstitutional and there is no minimum sentence. As shown under Ground One, this is precisely petitioner's situation.

It is the Order of this Court that the plaintiff's motion for reconsideration is hereby DENIED.

IT IS SO ORDERED this 16th day of January, 1990.



H. DALE COOK

Chief Judge, U. S. District Court

Entered

[illegible]

U.S. DISTRICT COURT

)))))))))

No. 85-C-977-C

ORDER

Now before the Court for its consideration are the motions of both parties to review costs taxed by the U. S. Court Clerk. On September 19, 1989, this Court entered judgment in favor of plaintiff. On November 30, 1989, the Clerk taxed costs in the amount of \$2,772.84.

Plaintiff objects because the Clerk denied his request for expert accounting witness fees in the amount of \$18,187.00. In Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437 (1987), the Supreme Court held that, absent explicit statutory or contractual authorization, a party's expert witness fees are recoverable only up to the \$30 per day statutory limit applicable to any witness. See also Chaparral Resources, Inc. v. Monsanto Co., 849 F.2d 1286, 1292 (10th Cir. 1988). Plaintiff points the Court to 36 O.S. §3629(B) which provides in pertinent part that, in an action on an insurance claim, "[u]pon a judgment rendered to either party, costs and attorney fees shall be allowable to the

prevailing party." This statute does not constitute an explicit authorization for expert fees, however. Plaintiff cites Kussman v. City and County of Denver, 671 P.2d 1000 (Colo. App. 1983), which appears to have authorized an award of a portion of expert witness fees under the general cost statute, Colo.Rev.Stat. §13-16-104. To the extent that the Kussman decision ignored Colo.Rev.Stat. §13-33-102(4), a statute expressly dealing with expert witnesses and rejected as proper federal authorization in Chapparral, supra, the Kussman decision is unpersuasive. Therefore, plaintiff's request is denied.

Defendant objects to (1) allowance of costs for two depositions in the amount of \$537.15, and (2) costs in the amount of \$731.19 as travel expenses to plaintiff's counsel for going to Denver to appear before the Tenth Circuit Court of Appeals. Introduction of a deposition at trial is not a prerequisite for finding that it was necessary to take the deposition. Hudson v. Nabisco Brands, Inc., 758 F.2d 1237, 1243 (7th Cir. 1985). Both depositions were referred to at trial and, the Court believes, were necessary at the time taken. These costs will be permitted.

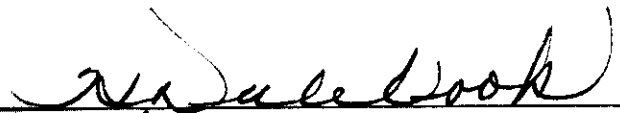
As for the costs of the trip to Denver, it is true, as plaintiff notes, that some courts have held litigation expenses (including necessary travel) to be a part of costs assessed. See, e.g., Herold v. Hajoca Corp., 864 F.2d 317, 323 (4th Cir. 1988), cert. denied, 109 S.Ct. 3159 (1989). However, the costs in this instance refer to travel associated with an appeal. Appellate costs are governed by Rule 39 of the Federal Rules of Appellate

Procedure. Travel expenses are not among those enumerated in Rule 39(e) as properly taxed by the district court. This cost will not be assessed.

It is the Order of the Court that plaintiff's motion to review taxation of costs is hereby denied.

It is the further Order of the Court that the motion of defendant to review taxation of costs is denied in part and granted in part. Plaintiff is awarded costs in the amount of \$2,041.65.

IT IS SO ORDERED this 16th day of January, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SCOTT MARTIN, TRUSTEE,
Plaintiff,
vs.
PACIFIC INSURANCE COMPANY,
Defendant.

No. 85-C-977-C

ORDER

Before the Court is the motion of defendant for entry of a new judgment and alternative motion for a new trial.

On September 19, 1989, the Court entered judgment on this insurance claim in plaintiff's favor in the amount of \$224,245.91. The Court has reviewed the specific objections and plaintiff's response thereto, and is unpersuaded that the judgment should be altered.

It is the Order of the Court that the motion of defendant for entry of a new judgment and alternative motion for a new trial is hereby DENIED.

IT IS SO ORDERED this 16th day of January, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

entered

JAN 13 1990
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

LILLIAN GRAHAM,

Plaintiff,

vs.

No. 86-C-516-C

AMERICAN AIRLINES, INC.,
a corporation,

Defendant.

ORDER

Before the Court is the motion of the plaintiff to review costs. On August 11, 1989, the Court entered judgment in favor of the defendant. On October 4, 1989, the Court Clerk awarded costs to defendant in the amount of \$13,111.80. Plaintiff asks the Court to review the award pursuant to Rule 54(d) F.R.Cv.P.

The present motion raises five grounds. First, that judgment was entered without costs being expressly awarded to defendant. Such is not necessary, and the prevailing party is presumptively entitled to costs. See Serna v. Manzano, 616 F.2d 1165 (10th Cir. 1980). Second, that the Court should deny costs because it found that plaintiff had established a prima facie case of discrimination. Again, however, an award of costs involves the prevailing party in the lawsuit. Third, that the costs awarded were excessive. Upon review, the Court finds the award reasonable. Fourth, that the determination of costs should be postponed pending appeal. The Court declines to do so. Fifth, that plaintiff's

limited resources should be taken into consideration. Although some courts have so considered, the Tenth Circuit has not indicated that the losing party's financial condition overcomes the presumption that the prevailing party is entitled to costs.

It is the Order of the Court that the motion of the plaintiff to review costs is hereby DENIED.

IT IS SO ORDERED this 16th day of January, 1990.



H. DALE COOK

Chief Judge, U. S. District Court

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAN 17 1989

U.S. DISTRICT COURT

SCOTT MARTIN, TRUSTEE,
Plaintiff,
vs.
PACIFIC INSURANCE COMPANY,
Defendant.

No. 85-C-977-C

ORDER

Now before the Court for its consideration is the application of plaintiff for attorney fees. Plaintiff was awarded judgment in this action on an insurance contract and is entitled to reasonable attorney fees under 36 O.S. §3629(B). See also Thompson v. Shelter Mut. Ins., 875 F.2d 1460 (10th Cir. 1989).

Defendant's principal objection is that "the majority of the time plaintiff's counsel spent in this case was unnecessary and unproductive." It bases the objection on the fact that plaintiff initially claimed \$1,050,000.00, revised the figure at trial to \$837,027.00, and was ultimately awarded \$224,245.91. The Court disagrees with defendant's premise. Those cases discussing reduction for partial success, for example Hernandez v. George, 793 F.2d 264 (10th Cir. 1986), involve instances where a plaintiff was not successful on all claims. In the case at bar, there was only one claim. The issues were difficult, as evidenced by the fact that the Tenth Circuit Court of Appeals set forth a formula which

neither party argued during the initial trial. Defendant's objection to recovery for paralegal time is not well taken. See Missouri v. Jenkins, 109 S.Ct. 2463 (1989).

The Court has reviewed the plaintiff's requested fees, as reduced by plaintiff on December 4, 1989, and finds them reasonable.

It is the Order of the Court that plaintiff is hereby granted attorney fees in the amount of \$43,476.25.

IT IS SO ORDERED this 16th day of January, 1990.



H. DALE COOK

Chief Judge, U. S. District Court

Entered

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JAN 13 1991

JACOB E. ...
U.S. DISTRICT COURT

FOREST OIL CORPORATION,
Plaintiff,

vs.

No. 87-C-801-C

OKLAHOMA NATURAL GAS COMPANY,
Defendant.

ORDER

Before the Court are defendant's objections to the Report and Recommendation of the U. S. Magistrate filed on July 20, 1989.

The Court has independently reviewed the case file, the specific objections of defendant, and plaintiff's response. The Court has concluded that the Magistrate's Report is in accord with presently applicable law under the facts of this case.

It is the Order of the Court that the motion of defendant to stay is hereby DENIED.

It is the further Order of the Court that plaintiff's motion to strike the affirmative defense of severance of claims is GRANTED.

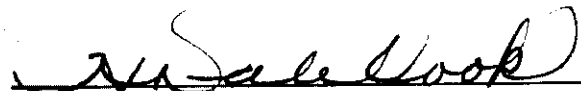
It is the further Order of the Court that plaintiff's motion to strike the affirmative defense of frustration of purpose or commercial impracticability is hereby DENIED.

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It is the further Order of the Court that the plaintiff's motion to strike the affirmative defense of contravention of public policy is hereby GRANTED.

It is the further Order of the Court that plaintiff's motion to strike defendant's counterclaims is hereby DENIED.

IT IS SO ORDERED this 16th day of January, 1990.



H. DALE COOK

Chief Judge, U. S. District Court